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Supreme Court of the United States

OCTOBER TERM, 1949

No. 96

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R. M. POWELL, ET AL., PETITIONERS,

v.s.

THE UNITED STATES CARTRIDGE COMPANY

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT

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PETITION FOR CERTIORARI FILED JUNE 3, 1949.

CERTIORARI GRANTED OCTOBER 10, 1949.

# RECORD.

Vol. I.

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## United States Circuit Court of Appeals, EIGHTH CIRCUIT.

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No. 13,663.

CIVIL.

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THE UNITED STATES CARTRIDGE COMPANY,  
A CORPORATION,  
APPELLANT,

vs.

R. M. POWELL ET AL.,  
APPELLEES.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF MISSOURI

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Throughout this Transcript of Record there are many blank pages which apparently have been assigned page numbers. These blank pages have not been microcarded, and the user of these cards will be so notified at each point where this occurs.

---Matthew Bender & Co.

Pleas and proceedings in the United States Court of Appeals for the Eighth Circuit, at the March Term, 1949, of said Court, before the Honorable Archibald K. Gardner, Chief Judge, and the Honorable John B. Sanborn, the Honorable Joseph W. Woodrough, the Honorable Seth Thomas, the Honorable Harvey M. Johnsen, the Honorable Walter G. Riddick and the Honorable John Caškie Collet, Circuit Judges.

Attest:

(Seal)

E. E. KOCH,

Clerk of the United States Court  
of Appeals for the Eighth Cir-  
cuit.

Be it Remembered that heretofore, to-wit: on the 19th day of November, A. D. 1947, a transcript of record pursuant to an appeal taken from the District Court of the United States for the Eastern District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein The United States Cartridge Company, a Corporation, was Appellant and R. M. Powell, et al., were Appellees.

Printed record on which the appeal was heard in the United States Court of Appeals for the Eighth Circuit, is in the words and figures following, to-wit:

[fol. 1]

Notice of Appeal.

(Filed September 17, 1947.)

In the United States District Court for the Eastern  
Division of the Eastern Judicial District  
of Missouri.

R. M. Powell, et al.,

vs.

The United States Cartridge Company,  
a corporation,

Plaintiffs,

Defendant.

Court Room  
No. 1  
Civil Action  
No. 3597

Notice Is Hereby Given that The United States Cartridge Company, a corporation, the defendant in the above entitled cause, hereby appeals to the Circuit Court of Appeals for the Eighth Circuit from the final judgment and decree entered in this action on May 19, 1947, and from the order entered on September 2, 1947, denying and overruling Defendant's Motion for a New Trial.

RHODES E. CAVE,

R. H. McROBERTS,

W. C. CONNETT IV,

1630 Boatmen's Bank Building,

St. Louis 2, Missouri,

Attorneys for Defendant The United  
States Cartridge Company.

BRYAN, CAVE, McPHEETERS & McROBERTS,

1630 Boatmen's Bank Building,

St. Louis 2, Missouri,

Of Counsel.

[fol. 2] Docket entry showing filing of notice of appeal and mailing copy of such notice by the clerk of the court to attorney of record for plaintiffs.

(September 17, 1947.)

Notice of appeal of defendant to the United States Circuit Court of Appeals, 8th Circuit, from final judgment and decree heretofore entered herein May 19, 1947, denying and overruling defendant's motion for a new trial, filed and copy of aforesaid notice of appeal forthwith mailed by the Clerk of the Court to Thomas Bond, Esq., attorney of record for plaintiffs.

---

Docket entry showing filing of complaint by plaintiffs.

(May 4, 1945.)

Complaint filed and summons issued directed to defendant returnable within twenty days after service.

(Docket Entry of filing of First Amended Complaint.)

(April 5, 1946.)

On oral motion of plaintiffs, the persons named in Exhibit A to the complaint herein are [joined] as additional parties plaintiff. First amended complaint joining said persons as parties plaintiff, filed by leave.

---

[fol. 3] First Amended Complaint.  
(Filed April 5, 1946.)

In the United States District Court for the  
Eastern Division of the Eastern Judicial  
District of Missouri

R. M. Powell, A. C. Kropp, F. N. Harris,  
J. M. Tyler, J. C. Marshall, A. W. Mc-  
Clung, G. H. Bentine, Joe Reeves, Her-  
bert Hahn, N. W. Myers, B. J. Ludwig,  
E. L. Stockho, William Niedringhaus,  
William Stutz, S. P. Coley, L. W. Trim-  
ble, R. M. Stewart, B. H. Hargate, J. S.  
Schneider, Walter Gorg, Jr., B. M.  
Casey, A. H. Erickson, Elmer Maher,  
Emmett Hoskins, F. P. Knight, R. A.  
Westra, D. F. Bateman, Al Hetman,  
George Burmeister, G. B. Darby, R. E.  
Jenniches, J. J. Schwartz, A. C. Kemp,  
Byron Yancey, J. D. Cavanaugh, W. F.  
O'Meara, Roland Carbone, W. A.  
Broad, C. L. Valei, Mike Malloy, Rus-  
sell Barnett, William Hirschberger,  
Frank Connell, Floy L. Jennings, Ster-  
ling Cook, Cliff Champion, Don Burke,  
W. C. Viehmann, F. M. Kercheval, Guy  
Burke, W. C. Viehmann, F. M. Kerche-  
val, Guy Cruce, R. Baxter, N. C. Wal-  
ther, George Gillen, James Vollbrecht,  
R. J. Peterson, Jack DeLargy, C. C.  
Brace, S. F. Peters, A. Lockhart,  
Plaintiffs,

vs.

The United States Cartridge Company,  
a corporation,

Defendant.

I

Now comes the above named plaintiffs, by their attorney, and by leave of court, file this their first amended

Court No. 1  
Civil Action  
No. 3597

complaint, and for cause of action state that defendant is a corporation duly organized and incorporated under the laws of the state of Maryland, duly licensed to do business in the state of Missouri, and having an office and agents for the transaction of its business at 4300 Goodfellow Avenue in the City of St. Louis, Missouri and in [fol. 4] the Eastern Judicial District of Missouri. That the above named plaintiffs, and each of them, were all employees of defendant and were and are similarly situated within the meaning of section 16 b. of the Fair Labor Standards Act of 1938 (29 U. S. C. 216b).

## II

Jurisdiction is conferred on this court by Sec. 41 (8), 28 U. S. C. A. (Judicial Code Sec. 24 (8),) giving the United States District Court original Jurisdiction of all suits and proceedings arising under any law regulating commerce without regard to the citizenship of the parties or the sum of money or value in controversy, and also by Sec. 16 b. of the Fair Labor Standards Act of 1938 (Sec. 216 (b), Title 29 U. S. C.) hereinafter referred to as the Act.

## III

That during all the times hereinafter mentioned defendant was engaged in the operation of a munitions plant in the City of St. Louis, Missouri and in the Eastern Judicial District of Missouri, wherein it manufactured small arms ammunition, particularly 30 or 50 or 60 calibre shells for use in rifles and machine guns, all intended for use by the military forces of the United States and its allies and all intended for transportation and use to and at points outside the state of Missouri. That defendant purchased a large part of the raw materials that entered into the manufacture of said ammunition at points outside of the state of Missouri and caused same to be transported in interstate commerce into the state of Missouri and delivered to defendant at its said plant. That the entire product of defendant's said munitions plant was destined for use by [fol. 5] the armed forces of the United States on the then existing battle fronts and military establishments and on

the seas and in the air, and to supply other munitions plants and contractors outside the state of Missouri, and that same were produced for interstate commerce and were sold, offered for transportation, transported, shipped and delivered in interstate commerce from defendant's plant at St. Louis, Missouri to various points outside the state of Missouri. That as a necessary part of the said manufacturing operations at said plant, defendant made use of means of interstate communication, to-wit: the telephone and telegraph, and in the transportation of the raw material into said plant and the finished product out of said plant, defendant made use of railroads, airplanes, steamships, automobiles, trucks and other means or instrumentalities of interstate commerce, and that at all times herein mentioned, defendant was engaged in interstate commerce, and in the production of goods for interstate commerce, and was subject to the provisions of the Fair Labor Standards Act of 1938." That plaintiffs, and each of them, while employed by defendant at said plant, were employed in interstate commerce and in the production of goods for interstate commerce within the meaning of the Fair Labor Standards Act of 1938. And that defendant was an "Employer" within the meaning of said Act.

#### IV

The plaintiffs, and each of them, were employed by the defendant at its said plant for the periods hereinafter stated in the production of goods for interstate commerce at agreed salaries for a 40 hour work week in the Safety Department at said plant in the capacity of safety men, of whom there were about eighty-five on defendant's pay-[fol. 6] roll who were assigned to each manufacturing unit, and to each special function of plant operation on each working shift. That plaintiffs were all similarly situated and performed similar duties and the regular duties assigned to them were as follows, to-wit:

After reporting the time, checking in and changing into working clothes, it was the duty of each man to patrol his unit and [make] inspections. These inspections included

the floors, machinery, tools, equipment, materials and the working practices of employes. When unsafe or unsanitary conditions of buildings or equipment were observed, and when unsafe practices of employes or their failure to use or wear safety devices were noted, the men were required to report same orally to the foremen for correction, and thereafter were required to make written reports on prescribed forms of said unsafe conditions or violations of safety rules. The men were also required to make written reports on all accidents and state therein the cause and extent of the injury.

In addition to the aforesaid regular duties, the men were required to attend meetings of the safety units and to attend plant drills and to be on hand during black-outs.

That the aforesaid services and duties performed by the plaintiffs were necessary to and interwoven with the interstate commerce business of the defendant, and were necessary and contributed to and were interwoven with the production of goods for interstate commerce by the defendant, and tended to and did prevent work stoppage and loss of man hours in production, and were and are an essential and necessary part of the manufacturing operations carried on by defendant, and were and are essential to the production of the ammunition produced by defendant, [fol. 7] and plaintiffs state that in rendering said services and in performing said duties plaintiffs were and are engaged in the production of goods for interstate commerce within the meaning of the Act, and were and are subject to the provisions, and entitled to the benefits and protection of the Act, and particularly Sections 6 and 7 thereof, and that plaintiffs were and are entitled to be paid for all overtime worked in excess of 40 hours per week at the rate of one and one-half time the regular rate at which they were employed.

## V

That during the periods hereinafter stated defendant employed the plaintiffs, and each of them in interstate commerce and in the production of goods for interstate

commerce, as aforesaid, for work weeks longer than the applicable maximum number of hours under Section 7 of the Act, and defendant in violation of the Act, failed and refused to compensate them for such employment at rates not less than one and one-half times the regular rate at which they were employed, and that defendant is indebted to said plaintiffs, and each of them, for said overtime compensation, and for equal amounts in addition thereto for liquidated damages and for a reasonable attorney's fee. That plaintiffs do not have complete and accurate knowledge of the times and hours [or] labor, the time cards and other records showing the number of hours being in the possession of defendant. Plaintiffs are informed and believe and upon such information and belief state that same are approximately as stated in the following paragraph.

## VI

1. The plaintiff, R. M. Powell, alleges that during the period from November 2, 1942 to March 31, 1944, he was [fol. 8] employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to October 10, 1943, and \$110.77 per two weeks to March 26, 1944, and \$46.15 per week to April 9, 1944, and that his regular hourly rate was \$1.30 per hour to October 10, 1943, and \$1.38 per hour to April 9, 1944. That during all of said period he was required to work 640.8 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$1,232.46.

2. The plaintiff, A. C. Kropp, Alleges that during the period from December 2, 1941 to April 7, 1945, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to January 24, 1943, and \$51.92 per week to May 23, 1943, and \$57.69 per week to October 16, 1943, and \$120.00 per two weeks to February 13, 1943, and \$129.23 per two weeks to March 11, 1944, and that his regular hourly rate was \$1.15 per

hour to January 24, 1943, and \$1.30 per hour to May 23, 1943, and \$1.44 per hour to October 10, 1943, and \$1.50 per hour to February 13, 1944, and \$1.61 per hour to March 11, 1944. That during all of said periods he was required to work 1585.1 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$3,296.51.

3. That plaintiff, F. N. Harris, alleges that during the period from May 31, 1942 to March 10, 1945, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to January 24, 1943, [fol. 9] and \$51.92 per week to October 10, 1943, and \$110.77 per two weeks to October 24, 1943, and \$128.77 per two weeks to March 11, 1944, and that his regular hourly rate was \$1.15 per hour to January 24, 1943, and \$1.30 per hour to October 10, 1943, and \$1.38 per hour to October 24, 1943; and \$1.61 per hour to March 11, 1944. That during all of said periods he was required to work 1211.1 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid regular hourly rate, amounting in all to the sum of \$2,550.70.

4. That plaintiff, J. M. Tyler, alleges that during the period from April 14, 1942 to August 31, 1943, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to June 14, 1942, and \$51.92 per week to June 6, 1943, and \$57.69 per week to August 29, 1943, and that his regular hourly rate was \$1.15 per hour to June 14, 1942, and \$1.30 per hour to June 6, 1943, and \$1.44 per hour to August 29, 1943. That during all of said periods he was required to work 742.8 hours overtime; that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$1,419.37.

5. That plaintiff, J. C. Marshall, alleges that during the period from January 25, 1943 to August 28, 1943, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to August 29, 1943, and that his regular hourly rate was \$1.15 per hour to August 29, 1943. That during all of said periods he was [fol. 10] required to work 160.3 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$279.86.

6. That plaintiff, A. W. McClung, alleges that during the period from November 21, 1943 to September 10, 1944, he was employed by defendant as a safety man at a base pay of \$48.69 per week for a forty hour week to September 10, 1944, and that his regular hourly rate was \$1.21 per hour to September 10, 1944. That during all of said periods he was required to work 487.8 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$878.33.

7. That plaintiff, G. H. Bentine, alleges that during the period from March 1, 1943 to August 17, 1945, he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to October 3, 1943, and \$55.38 per week to February 5, 1945, and that his regular hourly rate was \$1.30 per hour to October 3, 1943, and \$1.28 per hour to February 25, 1945. That during all of said periods he was required to work 1063.6 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$2,064.87.

8. That plaintiff, Joe Reeves, alleges that during the period from June 11, 1942 to March 10, 1945, he was em-

[fol. 11] ployed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to January 24, 1943, and \$51.92 per week to June 20, 1943, and \$57.69 per week to October 3, 1943, and \$60.00 per week to October 24, 1943, and \$128.77 per two weeks to February 13, 1944, and \$138.46 per two weeks to March 11, 1945, and that his regular hourly rate was \$1.15 per hour to January 21, 1943, and \$1.30 per hour to June 20, 1943, and \$1.44 per hour to October 3, 1943, and \$1.50 per hour to October 24, 1943, and \$1.61 per hour to February 13, 1944, and \$1.73 per hour to March 11, 1945. That during all of said periods he was required to work 1460.3 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$3,078.05.

9. That plaintiff, Herbert Hahn, alleges that during the period from April 13, 1943 to October 28, 1944, he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to March 14, 1943, and \$57.69 per week to October 3, 1943, and \$60.00 per week to March 12, 1944, and that his regular hourly rate was \$1.30 per hour to March 14, 1943, and \$1.44 per hour to October 3, 1943, and \$1.50 per hour to March 12, 1944. That during all of said periods he was required to work 1136.4 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$2,207.64.

10. That plaintiff, N. W. Myers, alleges, that during the period from April 22, 1942 to March 11, 1944, he was em-  
[fol. 12] ployed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to October 3, 1943; and \$48.69 per week to October 24, 1943, and that his regular hourly rate was \$1.15 per hour to October 3, 1943, and \$1.21 per hour to October 24, 1943. That during all of said periods he was required to work 377.8 hours

overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the applicable regular hourly rate, amounting in all to the sum of \$687.39.

11. That plaintiff, B. J. Ludwig, alleges that during the period from November 1, 1941 to August 17, 1945, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to June 14, 1942, and \$51.92 per week to February 14, 1943, and \$57.69 per week to October 3, 1943, and \$60.00 per week to October 24, 1943, and \$128.77 per two weeks to April 23, 1944, and \$138.46 per two weeks to August 26, 1945, and that his regular hourly rate was \$1.15 per hour to June 14, 1942, and \$1.30 per hour to February 14, 1943, and \$1.44 per hour to October 3, 1943, and \$1.50 per hour to October 24, 1943, and \$1.61 per hour to April 23, 1944, and \$1.73 per hour to August 26, 1945. That during all of said periods he was required to work 1984.7 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$4,506.97.

12. That plaintiff, E. L. Stockho, alleges that during the period from March 31, 1943 to August 17, 1945, he was employed by defendant as a safety man at a base pay of \$40.38 per week for a forty hour week to November 22, 1942, and \$46.15 per week to February 21, 1943, and \$51.92 [tbl. 13] per week to July 4, 1943, and \$57.69 per week to October 3, 1943, and \$60.00 per week to October 24, 1943, and \$128.77 per two weeks to May 7, 1944, and \$133.85 per two weeks to August 12, 1945, and that his regular hourly rate was \$1.01 per hour to November 22, 1942, and \$1.15 per hour to February 21, 1943, and \$1.30 per hour to July 4, 1943, and \$1.44 per hour to October 3, 1943, and \$1.50 per hour to October 24, 1943, and \$1.61 per hour to May 7, 1944, and \$1.67 per hour to August 12, 1945. That during all of said periods he was required to work 1860.6 hours overtime, that is to say, in excess of the applicable maxi-

imum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$3,874.19.

13. That plaintiff, William Niedringhaus, alleges that during the period from April 20, 1942 to September 7, 1945, he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to April 4, 1943, and \$57.69 per week to October 3, 1943, and \$60.00 per week to October 24, 1943, and \$128.77 per two weeks to May 9, 1944, and \$69.23 per week to September 9, 1945, and that his regular hourly rate was \$1.30 per hour to April 4, 1943, and \$1.44 per hour to October 3, 1943, and \$1.50 per hour to October 24, 1943, and \$1.61 per hour to May 9, 1944, and \$1.73 per hour to September 9, 1945. That during all of said periods he was required to work 1859.2 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$4,163.69.

[fol. 14] 14. That plaintiff, William Stutz, alleges that during the period from June 7, 1943 to March 1, 1945, he was employed by defendant as a safety man at a base pay of \$126.92 per two weeks for a forty hour week to October 10, 1943, and \$138.00 per two weeks to March 11, 1945, and that his regular hourly rate was \$1.586 per hour to October 10, 1943, and \$1.73 per hour to March 11, 1945. That during all of said period he was required to work 1348.1 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$3,321.97.

15. That plaintiff, S. P. Coley, alleges that during the period from December 17, 1941, to February 27, 1945, he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to October

10, 1943, and \$110.77 per two weeks to November 19, 1944, and \$127.85 per two weeks to March 11, 1945, and that his regular hourly rate was \$1.30 per hour to October 10, 1943, and \$1.38 per hour to November 19, 1944, and \$1.60 per hour to March 11, 1945. That during all of said periods he was required to work 1118.6 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$2,407.42.

16. That plaintiff, L. W. Trimble, alleges that during the period from March 23, 1942, to August 17, 1945, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to March 28, 1943, and \$51.92 per week to October 3, 1943, and \$110.77 per two weeks to January 2, 1944, and \$117.69 per two weeks to August 26, 1945, and that his [fol. 15] regular hourly rate was \$1.15 per hour to March 28, 1943, and \$1.30 per hour to October 3, 1943, and \$1.38 per hour to January 2, 1944, and \$1.47 per hour to August 26, 1945. That during all of said periods he was required to work 1718.3 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$3,423.95.

17. That plaintiff, R. M. Stewart, alleges that during the period from February 21, 1942, to September 23, 1944, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to June 14, 1942, and \$51.92 per week to March 14, 1943, and \$57.69 per week to October 3, 1943, and \$60.00 per week to November 7, 1943, and \$64.38 per week to February 6, 1944, and \$69.23 per week to September 24, 1944, and that his regular hourly rate was \$1.15 per hour to June 14, 1942, and \$1.30 per hour to March 14, 1943, and \$1.44 per hour to October 3, 1943, and \$1.50 per hour to November 7, 1943, and \$1.61 per hour to February 6, 1944, and \$1.73 per hour to September 24, 1944. That during all of said

periods he was required to work 1465.9 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times, the aforesaid applicable regular hourly rate, amounting in all to the sum of \$3,082.48.

18. That plaintiff, B. H. Hargate, alleges that during the period from January 13, 1942, to August 31, 1945, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to January 24, 1943, and \$51.92 per week to October 3, 1943, and \$110.77 per two weeks to September 23, 1945, and that his regular [fol. 16] hourly rate was \$1.09 per hour to June 14, 1942, and \$1.15 per hour to January 24, 1943, and \$1.30 per hour to October 3, 1943, and \$1.38 per hour to September 23, 1945. That during all of said periods he was required to work 2074.2 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$3,873.17.

19. That plaintiff, J. S. Schneider, alleges that during the period from June 20, 1943, to September 15, 1945, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to October 10, 1943, and \$97.38 per two weeks to June 4, 1944, and \$108.92 per two weeks to February 25, 1945, and \$127.85 per two weeks to September 23, 1945, and that his regular hourly rate was \$1.15 per hour to October 10, 1943, and \$1.24 per hour to June 4, 1944, and \$1.36 per hour to February 25, 1945, and \$1.60 per hour to September 23, 1945. That during all of said periods he was required to work 955.3 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$1,700.70.

20. That plaintiff, Walter Gorg, Jr., alleges that during the period from February 14, 1943, to January 3, 1944, he

was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to May 30, 1943, and \$51.92 per week to October 3, 1943, and \$55.38 per week to January 16, 1944, and that his regular hourly rate was \$1.15 per hour to May 30, 1943, and \$1.30 per hour to October 3, 1943, and \$1.38 per hour to January 16, [fol. 17] 1944. That during all of said periods he was required to work 450.2 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$871.67.

21. That plaintiff, B. M. Casey, alleges that during the period from July 4, 1943 to March 11, 1944, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to October 3, 1943, and \$48.69 per week to October 24, 1943, and \$104.77 per two weeks to March 12, 1944, and that his regular hourly rate was \$1.15 per hour to October 3, 1943, and \$1.21 per hour to October 24, 1943, and \$1.31 per hour to March 12, 1944. That during all of said periods he was required to work 315.2 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$544.01.

22. That plaintiff, A. H. Erickson, alleges that during the period from May 11, 1942 to March 13, 1943, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to June 14, 1942, and \$51.92 per week to March 14, 1943, and that his regular hourly rate was \$1.15 per hour to June 14, 1942, and \$1.30 per hour to March 14, 1943. That during all of said periods he was required to work 530.2 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime [fol. 18] compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$1,027.74.

23. That plaintiff, Elmer Maher, alleges that during the period from December 17, 1941 to February 12, 1944, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to June 14, 1942, and \$57.69 per week to June 6, 1943, and \$126.92 per two weeks to October 10, 1943, and \$138.00 per two weeks to February 13, 1944, and that his regular hourly rate was \$1.15 per hour to June 14, 1942, and \$1.44 per hour to June 6, 1943, and \$1.58 per hour to October 10, 1943, and \$1.72 per hour to February 13, 1944. That during all of said periods he was required to work 1271 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$2,673.95.

24. That plaintiff, Emmett Hoskins, alleges that during the period from January 1, 1942 to January 28, 1944, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to June 14, 1942, and \$54.92 per week to April 4, 1943, and \$57.69 per week to October 3, 1943, and \$60.00 per week to October 24, 1943, and \$128.77 per two weeks to January 30, 1944, and that his regular hourly rate was \$1.15 per hour to June 14, 1942, and \$1.30 per hour to April 4, 1943, and \$1.44 per hour to October 3, 1943, and \$1.50 per hour to October 24, 1943, and \$1.61 per hour to January 30, 1944. That during all of said periods he was required to work 1094.2 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled [fol. 19] to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to \$2,088.29.

25. That plaintiff, F. P. Knight, alleges that during the period from January 23, 1942 to September 12, 1943, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to June 14, 1942, and \$51.92 per week to March 14, 1943, and \$57.69 per week to September 12, 1943, and that his regular hourly rate was \$1.15 per hour to June 14, 1942, and \$1.30 per

hour to March 14, 1943, and \$1.44 per hour to September 12, 1943. That during all of said periods he was required to work 919.6 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$1,952.03.

26. That plaintiff, R. A. Westra, alleges that during the period from March 16, 1942 to February 26, 1943, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to June 14, 1942, and \$51.92 per week to February 28, 1943, and that his regular hourly rate was \$1.15 per hour to June 14, 1942, and \$1.30 per hour to February 28, 1943. That during all of said periods he was required to work 603 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate amounting in all to the sum of \$1,138.59.

27. That plaintiff, D. F. Bateman, alleges that during the period from March 29, 1943 to June 1, 1944, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to October 10, 1943, and \$97.38 per two weeks to January 1, 1944, and \$101.07 per two weeks to June 4, 1944, and that his regular hourly rate was \$1.15 per hour to October 10, 1943, and \$1.21 per hour to January 2, 1944, and \$1.31 per hour to June 4, 1944. That during all of said periods he was required to work 571.2 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$926.40.

28. That plaintiff, Al Herman, alleges that during the period from January 1, 1943 to September 12, 1943, he was employed by defendant as a safety man at a base pay of

\$46.15 per week for a forty hour week to April 4, 1943, and \$51.92 per week to September 12, 1943, and that his regular hourly rate was \$1.15 per hour to April 4, 1943, and \$1.30 per hour to September 12, 1943. That during all of said periods he was required to work 351 hours overtime, that [fol. 21] is to say in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$659.36.

29. The plaintiff, George Burmeister, alleges that during the period from May 15, 1942 to July 24, 1943, he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to February 28, 1943, and \$57.69 per week to July 25, 1943, and that his regular hourly rate was \$1.30 per hour to February 28, 1943, and \$1.44 per hour to July 25, 1943. That during all of said periods he was required to work 837.6 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$1,690.10.

30. That plaintiff, G. B. Darby, alleges that during the period from March 20, 1943, to August 31, 1945, he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to October 3, 1943, and \$55.38 per week to November 7, 1943, and \$120.00 per two weeks to August 9, 1945, and that his regular hourly rate was \$1.30 per hour to October 3, 1943, and \$1.38 per hour to November 7, 1943, and \$1.50 per hour to August 9, 1945. That during all of said periods he was required to work 1246.2 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$2,572.05.

[fol. 22] 31. That plaintiff, R. E. Jenniches, alleges that during the period from June 7, 1942 to December 28, 1942,

he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to January 3, 1943, and that his regular hourly rate was \$1.30 per hour to January 3, 1943. That during all of said period he was required to work 362.3 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$703.93.

32. That plaintiff, J. J. Schwartz, alleges that during the period from January 1, 1942 to June 17, 1944, he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty-hour week to October 10, 1943, and \$110.77 per two weeks to June 18, 1944, and that his regular hourly rate was \$1.30 per hour to October 10, 1943, and \$1.38 per hour to June 18, 1944. That during all of said periods he was required to work 802.7 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$1,595.14.

33. That plaintiff, A. C. Kemp, alleges that during the period from December 23, 1941 to September 16, 1944, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to June 14, 1942, and \$57.69 per week to January 10, 1943, and \$126.92 per two weeks to April 25, 1943, and \$138.46 per two weeks to September 24, 1944, and that his regular hourly rate was \$1.15 per hour to June 14, 1942, and \$1.44 per hour to January 10, 1943, and \$1.585 per hour to April 25, 1943, [fol. 23] and \$1.73 per hour to September 24, 1944. That during all of said periods he was required to work 1629.3 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$3,713.28.

34. That plaintiff, Byron Yancey, alleges that during the period from July 3, 1942 to March 10, 1945, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to July 4, 1943, and \$51.92 per week to November 7, 1943, and \$128.77 per two weeks to July 16, 1944, and \$138.46 per two weeks to March 11, 1945, and that his regular hourly rate was \$1.15 per hour to July 4, 1943, and \$1.30 per hour to November 7, 1943, and \$1.61 per hour to July 16, 1944, and \$1.73 per hour to March 11, 1945. That during all of said periods he was required to work 989.7 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$2,082.05.

35. That plaintiff, J. D. Cavanaugh, alleges that during the period from May 7, 1942, to June 15, 1944, he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to February 14, 1943, and \$57.69 per week to October 10, 1943, and \$120.00 per two weeks to October 24, 1943, and \$128.77 per two weeks to June 18, 1944, and that his regular hourly rate was \$1.30 per hour to February 14, 1943, and \$1.44 per hour to October 10, 1943, and \$1.50 per hour to October 24, 1943, and \$1.61 per hour to June 18, 1944. That during all of said periods he was required to work 1251.3 hours overtime, that is to say, in excess of the applicable maximum [fol. 24] under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$2,629.64.

36. That plaintiff, W. F. O'Meara, alleges that during the period from May 2, 1942 to October 5, 1945, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to January 24, 1943, and \$51.92 per week to March 21, 1943, and \$57.69 per week to June 27, 1943, and \$126.92 per two weeks to October 10, 1943, and \$138.00 per two weeks to October 7, 1945, and that his regular hourly rate was \$1.15 per hour

to January 24, 1943, and \$1.30 per hour to March 21, 1943, and \$1.44 per hour to June 27, 1943, and \$1.585 per hour to October 10, 1943, and \$1.725 per hour to October 7, 1945. That during all of said periods he was required to work 2224.2 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$5,084.61.

[fol. 25] 37. That plaintiff, R. Carbone, alleges that during the period from March 29, 1943 to October 9, 1943, he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to October 3, 1943, and \$55.38 per week to October 10, 1943, and that his regular hourly rate was \$1.30 per hour to October 3, 1943, and \$1.38 per hour to October 10, 1943. That during all of said periods he was required to work 334.3 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$651.83.

38. That plaintiff, W. A. Broad, alleges that during the period from June 23, 1943 to December 11, 1943, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to October 3, 1943, and \$48.69 per week to December 19, 1943, and that his regular hourly rate was \$1.15 per hour to October 3, 1943, and \$1.21 per hour to December 19, 1943. That during all of said periods he was required to work 257.2 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be [apid] overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$466.94.

39. That plaintiff, C. L. Valei, alleges that during the period from July 16, 1942 to September 15, 1945, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to February 24, 1943, and \$51.92 per week to October 10, 1943, and \$128.77 per two weeks to May 6, 1945, and \$138.46 per two weeks to

[fol. 26] Sept. 23, 1945, and that his regular hourly rate was \$1.15 per hour to February 21, 1943, and \$1.30 per hour to October 10, 1943, and \$1.61 per hour to May 6, 1945, and \$1.67 per hour to September 23, 1945. That during all of said periods he was required to work 1428.5 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$3,230.80.

40. That plaintiff, Mike Malloy, alleged that during the period from December 27, 1942, to October 24, 1943, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to October 3, 1943, and \$47.32 per week to October 24, 1943, and that his regular hourly rate was \$1.15 per hour to October 3, 1943, and \$1.21 per hour to October 24, 1943. That during all of said periods he was required to work 368.2 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$640.47.

41. That plaintiff, Russell Barnett, alleges that during the period from April 28, 1942 to February 11, 1945, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to June 14, 1942, and \$51.92 per week to April 4, 1943, and \$57.69 per week to October 3, 1943, and \$60.00 per week to October 24, 1943, and \$128.77 per two weeks to February 13, 1944, and \$120.00 per two weeks to February 11, 1945, and that his regular hourly rate was \$1.15 per hour to June 14, 1942, and \$1.30 per hour to April 4, 1943, and \$1.44 per hour [fol. 27] to October 3, 1943, and \$1.50 per hour to October 24, 1943, and \$1.615 per hour to February 13, 1944, and \$1.50 per hour to February 11, 1945. That during all of said periods he was required to work 1633.6 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$3,385.72.

42. That plaintiff, William Hirschberger, alleges that during the period from August 10, 1942, to July 8, 1944, he was employed by defendant as a Safety man at a base pay of \$51.92 per week for a forty hour week to April 4, 1943, and \$57.69 per week to July 18, 1943, and \$1.73 per hour to July 16, 1944. That during all of said periods he was required to work 979.3 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$2,075.75.

43. That plaintiff, Frank Connell, alleges that during the period from June 22, 1942, to August 4, 1943, he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to February 28, 1943, and \$57.69 per week to August 1, 1943, and that his regular hourly rate was \$1.30 per hour to February 28, 1943, and \$1.44 per hour to August 1, 1943. That during all of said periods he was required to work 813.6 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$1,644.28.

44. That plaintiff, Floy L. Jennings, alleges that during the period from April 6, 1942 to March 31, 1944, he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to July 4, 1943, and \$57.69 per week to October 24, 1943, and \$120.00 per two [fol. 28] weeks to April 9, 1944, and that his regular hourly rate was \$1.30 per hour to July 4, 1943, and \$1.44 per hour to October 24, 1943, and \$1.50 per hour to April 9, 1944. That during all of said periods he was required to work 1112 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable hourly rate, amounting in all to the sum of \$2,246.11.

45. That plaintiff, Sterling Cook, alleges that during the period from February 10, 1942 to March 31, 1944, he was

employed by defendant as a safety man at a base pay of \$45.15 per week for a forty hour week to June 14, 1942, and \$51.92 per week to March 28, 1943, and \$57.69 per week to October 10, 1943, and \$120.00 per two weeks to October 24, 1943, and \$128.77 per two weeks to April 9, 1944, and that his regular hourly rate was \$1.15 per hour to June 14, 1942, and \$1.30 per hour to March 28, 1943, and \$1.44 per hour to October 10, 1943, and \$1.50 per hour to October 24, 1943, and \$1.61 per hour to April 9, 1944. That during all of said periods he was required to work 1283.7 hours overtime, [fol. 29] that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$2,603.49.

46. That plaintiff, Cliff Champion, alleges that during the period from April 21, 1942, to June 1, 1944, he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to Feb. 7, 1943, and \$57.69 per week to Sept. 12, 1943, and \$126.92 per two weeks to October 10, 1943, and \$138.00 per two weeks to June 4, 1944, and that his regular hourly rate was \$1.30 per hour to February 7, 1943, and \$1.44 per hour to September 12, 1943, and \$1.585 per hour to October 10, 1943, and \$1.73 per hour to June 4, 1944. That during all of said periods he was required to work 1414.1 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$3,102.61.

47. That plaintiff Don Burke, alleges that during the period from April 16, 1942 to October 23, 1942 and from December 15, 1942 to April 20, 1943, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to April 25, 1943, and that his regular hourly rate was \$1.15 per hour to April 25, 1943. That during all of said periods he was required to work 419.9 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of

one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$731.59.

[fol. 30] 48. That plaintiff, W. C. Vielmann, alleges that during the period from January 5, 1942 to April 23, 1945, he was employed by defendant as a safety man at a base pay of \$34.92 per week for a forty hour week to October 3, 1943, and \$410.77 per two weeks to April 22, 1945, and that his regular hourly rate was \$1.30 per hour to October 3, 1943, and \$1.38 per hour to April 22, 1945. That during all of said periods he was required to work 728.1 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$1,482.62.

49. That plaintiff, F. M. Kercheval, alleges that during the period from November 29, 1942 to August 7, 1945, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to February 21, 1943, and \$51.92 per week to October 10, 1943, and \$110.77 per two weeks to October 24, 1943, and \$128.77 per two weeks to April 8, 1945, and \$133.85 per two weeks to August 12, 1945, and that his regular hourly rate was \$1.15 per hour to February 21, 1943, and \$1.30 per hour to October 10, 1943, and \$1.44 per hour to October 24, 1943; and \$1.60 per hour to April 8, 1945, and \$1.68 per hour to August 12, 1945. That during all of said periods he was required to work 1450 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$3,147.78.

50. That plaintiff, Guy Crace, alleges that during the period from June 1, 1942 to March 10, 1943, he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to March 14, 1943, and that his regular hourly rate was \$1.30 per hour to March 14, 1943. That during all of said period he was required to work 402.5 hours overtime, that is to say, in

excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$792.55.

51. That plaintiff, R. Baxter, alleges that during the period from January 14, 1942 to October 19, 1943, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to June 20, 1943, and \$51.92 per week to October 10, 1943, and \$55.38 per week to October 24, 1943, and that his regular hourly rate was \$1.15 per hour to June 20, 1943, and \$1.30 per hour to October 10, 1943, and \$1.38 per hour to October 24, 1943. That during all of said periods he was required to work 318.6 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$579.18.

52. The plaintiff, N. C. Walther, alleges that during the period from April 12, 1942 to June 24, 1944, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to June 14, 1942, and \$51.92 per week to June 6, 1943, and \$57.69 per week to October 10, 1943, and \$120.00 per two weeks to July 2, 1944, and that his regular hourly rate was \$1.15 per hour to June 14, 1942, and \$1.30 per hour to June 6, 1943, and \$1.44 per hour to October 10, 1943, and \$1.50 per hour to July 2, 1944. That during all of said periods he was required to work 1090.2 hours overtime, that is to say, in excess of the applicable maximum under Section 7 [fol. 32] of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$2,218.31.

53. That plaintiff, George Gillen, alleges that during the period from October 23, 1941 to October 3, 1943, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to January 24, 1943, and \$51.92 per week to October 3, 1943, and that his

regular hourly rate was \$1.15 per hour to January 24, 1943, and \$1.30 per hour to October 3, 1943. That during all of said periods he was required to work 734.9 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$1,346.58.

54. That plaintiff, James Vollbrecht, alleges that during the period from November 22, 1942 to December 30, 1943, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to February 21, 1942, and \$51.92 per week to October 10, 1943, and \$55.38 per week to January 2, 1944, and that his regular hourly rate was \$1.15 per hour to February 21, 1942, and \$1.30 per hour to October 10, 1943, and \$1.38 per hour to January 2, 1944. That during all of said periods he was required to work 604.7 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$1,104.53.

55. That plaintiff, R. J. Peterson, alleges that during the period from April 25, 1942 to August 18, 1945, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to February 21, 1943, and \$51.92 per week to October 3, 1943, and \$55.38 [fol. 33] per week to November 7, 1943, and \$128.77 per two weeks to April 9, 1944, and \$138.46 per two weeks to December 3, 1944, and \$147.69 per two weeks to August 26, 1945, and that his regular hourly rate was \$1.15 per hour to February 21, 1943, and \$1.30 per hour to October 3, 1943, and \$1.38 per hour to November 7, 1943, and \$1.61 per hour to April 9, 1944, and \$1.73 per hour to December 3, 1944, and \$1.84 per hour to August 26, 1945. That during all of said periods he was required to work 1705.6 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-

half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$3,977.92.

56. That plaintiff, Jack DeLargy, alleges that during the period from December 3, 1941 to August 6, 1943, he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to January 24, 1943, and \$57.69 per week to August 8, 1943, and that his regular hourly rate was \$1.30 per hour to January 24, 1943, and \$1.44 per hour to August 8, 1943. That during all of said periods he was required to work 992.3 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$2,006.87.

[fol. 34] 57. That plaintiff, C. C. Brae, alleges that during the period from April 5, 1943 to November 18, 1944, he was employed by defendant as a safety man at a base pay of \$46.15 per week for a forty hour week to October 3, 1943, and \$97.38 per two weeks to November 21, 1943, and \$108.46 per two weeks to November 19, 1944, and that his regular hourly rate was \$1.15 per hour to October 3, 1943, and \$1.21 per hour to November 21, 1943, and \$1.355 per hour to November 19, 1944. That during all of said periods he was required to work 740.1 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$1,393.17.

58. That plaintiff, S. F. Peters, alleges that during the period from November 30, 1942 to June 20, 1943, he was employed by defendant as a safety man at a base pay of \$57.69 per week for a forty hour week to June 20, 1943; and that his regular hourly rate was \$1.44 per hour to June 20, 1943. That during all of said periods he was required to work 317.7 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the afore-

said applicable regular hourly rate, amounting in all to the sum of \$689.24.

59. That plaintiff, A. Lockhart, alleges that during the period from May 15, 1942 to April 8, 1945; he was employed by defendant as a safety man at a base pay of \$51.92 per week for a forty hour week to September 13, 1942, and \$57.69 per week to June 6, 1943, and \$126.92 per two weeks to October 10, 1943, and \$138.00 per two weeks to April 8, 1945, and that his regular hourly rate \$1.30 per hour to September 13, 1942, and \$1.44 per hour [fol. 35] to June 6, 1943, and \$1.58 per hour to October 10, 1943, and \$1.725 per hour to April 8, 1945. That during all of said periods he was required to work 1557.6 hours overtime, that is to say, in excess of the applicable maximum under Section 7 of the Act, for which he was entitled to be paid overtime compensation at the rate of one and one-half times the aforesaid applicable regular hourly rate, amounting in all to the sum of \$3,604.82.

## VII.

Wherefore plaintiffs pray that an accounting be had and that the amounts due from defendant to each of the plaintiffs herein be ascertained and determined and that plaintiffs have judgments for the amounts thereof, and, in addition thereto, equal amounts as liquidated damages, and for a reasonable attorney's fee for the institution and prosecution of this suit, and for costs.

THOMAS BOND,  
Attorney for Plaintiffs,  
705 Olive Street,  
St. Louis 1, Mo.

I hereby certify that I served the above First Amended Complaint upon defendant by mailing a copy thereof to Mr. Russell Vandivort, its attorney of record, this 3rd day of April, 1946.

THOMAS BOND,  
Attorney for Plaintiffs.

[fol. 36] (Order granting leave to amend First Amended Complaint.)

July 10, 1946.

On oral application of plaintiffs, plaintiffs are granted leave to amend their first amended complaint by interlineation by adding the word "The" to the corporate title of defendant. Said complaint so amended.

Filed in U. S. District Court on July 10, 1946.

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[fol. 37]

Answer.

(Filed April 18, 1946.)

First Defense.

(1) The First Amended Complaint fails to state a claim against the defendant upon which relief can be granted.

Second Defense.

(2) Defendant Admits the allegations in section numbered I of the First Amended Complaint, except the allegation that the plaintiffs named in the caption, and each of them, were and are similarly situated within the meaning of section 16 b of the Fair Labor Standards Act of 1938 (29 U. S. C. 216b), which allegation defendant Denies; Admits the allegations in section numbered II of the said complaint; Denies the allegations in section numbered III [fol. 38] of the said complaint; Admits that plaintiffs, and each of them, were employed by the defendant for the periods stated, but Denies each and every other allegation contained in section numbered IV of said complaint; Admits that the time cards and other records showing the number of hours worked by plaintiffs are in the possession of defendant, but Denies each and every other allegation contained in section numbered V of said complaint; Admits that the plaintiffs were employed for the periods, and at

the base pay, as alleged in the several paragraphs of section VI of the said complaint, but Denies that the base pay was, in any case, for a forty hour week, that the regular hourly rates were as alleged, and each and every other allegation contained in the several paragraphs of section numbered VI of the said complaint.

#### Third Defense.

(3) Each of the plaintiffs was employed in a bona fide administrative capacity, as such term is defined and delimited by the regulations of the Administrator of the Wage and Hour Division of the Department of Labor, and hence the provisions of the Fair Labor Standards Act of 1938 (29 U. S. C. 207) do not apply with respect to plaintiffs, or any of them.

#### Fourth Defense.

(4) None of the plaintiffs was engaged in commerce or in the production of goods for commerce within the meaning of the Fair Labor Standards Act of 1938, or the definitions of such terms contained in the said Act, and hence the provisions of the said Act do not apply to the plaintiffs, or any of them.

[fol. 39]

#### Fifth Defense.

(5) The right of action, if any, set forth in the First Amended Complaint with respect to any employment of plaintiff A. C. Kröpp in excess of forty hours in any work weeks prior to May 4th, 1942, did not accrue within three (3) years next before the commencement of this action, and hence any right of action with respect to any employment of said plaintiff prior to May 4th, 1942, is barred by the provisions of Sections 1012 and 1015 of the Revised Statutes of Missouri, 1939.

#### Sixth Defense.

(6) The right of action, if any, set forth in the First Amended Complaint with respect to any employment of

plaintiffs J. M. Tyler, J. C. Marshall, G. H. Bentine, Joe Reeves, N. W. Myers, B. J. Ludwig, William Niedringhaus, S. P. Coley, L. W. Trimble, R. M. Stewart, B. H. Hargate, Walter Gorg, Jr., A. H. Erickson, Elmer Maher, Emmett Hoskins, F. P. Knight, R. A. Westra, Al Herman, George Burmeister, G. B. Darby, R. E. Jefnichies, J. J. Schwartz, A. C. Kemp, Byron Yancey, J. D. Cavanaugh, W. F. O'Meara, L. Valei, Mike Malloy, Russell Barnett, William Hirschberger, Frank Connell, Floy L. Jennings, Sterling Cook, Cliff Champion, Don Burke, W. C. Lehmann, F. M. Kercheval, Guy Cruse, R. Baxter, N. C. Walther, George Gillen, James Vollbrecht, R. J. Peterson, Jack DeLargy, S. F. Peters and A. Lockhart in excess of forty hours in any work weeks prior to April 5, 1943, did not accrue within three (3) years next before the commencement of this action, and hence any right of action with respect to any employment of said plaintiffs, and each of them, prior to April 5, 1943, is barred by the provisions of Sections 1012 and 1015 of the Revised Statutes of Missouri, 1939.

[fol. 40] Wherefore, the defendant prays for judgment that the First Amended Complaint be dismissed with costs to the defendant.

RHODES E. CAVE,  
R. H. McROBERTS,  
W. C. CONNETT IV,  
1630 Boatmen's Bank Building,  
St. Louis 2, Missouri,  
Attorneys for Defendant.

BRYAN, CAVE, MCPHEETERS & McROBERTS,  
1630 Boatmen's Bank Building,  
St. Louis 2, Missouri,  
Of Counsel.

[fol. 41] Amended and Additional Interrogatories  
Propounded by Plaintiffs Pursuant  
to Rule 33.

(Filed March 26, 1946.)

Now come plaintiffs and by leave of court withdraw the Interrogatories heretofore filed herein and in lieu thereof serve upon defendant and file herein the following Amended and Additional Interrogatories under Rule 33 and request that defendant answer same separately and fully and serve a copy of its Answer upon plaintiffs' attorney as provided in said Rule 33, to-wit:

1. Under the laws of what state is defendant incorporated, and when was it licensed to do business in Missouri?
2. Did defendant operate a manufacturing plant in St. Louis for the manufacture of ammunition and, if so, over what period of time did it operate same and where was the plant located?
3. Describe the product produced at this plant.
4. For what purpose was this product produced?
5. What raw materials were used by defendant in the manufacture of this product?
6. Where and from whom were these raw materials obtained?
7. What method of transportation or common carrier was used to deliver the raw materials to defendant's plant?
8. What facilities did defendant maintain on its premises for the receipt of materials and the shipment of its products?
9. Describe the switching facilities in use, particularly, where were the tracks located, who maintained them, whose crews operated them, with what railroads did they connect and at what points did they so connect?
- [fol. 42] 10. Describe the loading and unloading facilities at said plant and state particularly where the platforms were located and who maintained them.
11. Whose employees loaded and unloaded out-going and in-coming freight?

12. Was all the ammunition produced at said plant shipped to points outside the State of Missouri? If not, state what percentage went to points outside of Missouri.
13. Name the individual or individuals who designated the points to which the product was to be shipped and give present address of such individual or individuals.
14. Who did the actual billing on out-bound shipments and by whom employed?
15. Who did the actual loading of out-bound shipments and by whom employed?
16. Did the defendant keep records of the hours worked by plaintiffs and the men named in said Exhibit A while they were in defendant's employ?
17. Did defendant keep records of the hours spent by plaintiffs and the men named in said Exhibit A in attending plant drills, blackouts and meetings?
18. Did the defendant keep records of the wages or salaries paid plaintiffs and the men named in said Exhibit A while said parties were in defendant's employ?
19. Did defendant keep records showing the destination of the ammunition shipped out of said plant?
20. Describe the records referred to in questions 16, 17, 18 and 19, supra, in such manner as to identify them and state where they are kept and who now has custody of them.
21. Did defendant cause to be published a certain booklet entitled, "Your Job with the St. Louis Ordnance Plant"?
22. If so, when was this booklet published and how and to whom was it distributed?
23. Describe how the Safety Department was organized from January 1, 1942 to May 1, 1945, with the names of the top personnel, and attach an organization chart to your answer.
24. Defendant has heretofore delivered to plaintiffs' attorney certain information from its records, computed separately as to each plaintiff and each claimant herein, purporting to show name, badge number, dates of commencement and termination of employment, payroll periods, occupational code, total actual hours, rate, gross wages, cer-

tain deductions and net amount paid. State by whom these computations were made and give the name and present address of the person or persons under whose supervision they were prepared.

[fol. 43] 25. Do the columns headed "Total Actual Hours" show all the time that appears on the time cards?

26. Do such columns show all the time the employees referred to were required to be in attendance or on duty?

27. If answer is "no" state what time was not included.

28. Is it not true that for a certain period the employees referred to were required to report one-half hour ahead of shift?

29. If answer is "yes" state the period over which this requirement was in force.

30. Is it not true that all plaintiffs and claimants herein were required to report one-half hour ahead of shift from the commencement of their employment until about October 10, 1943?

31. Is it not true that defendant failed to include this one-half hour in the columns headed "Total Actual Hours" in the computations furnished plaintiffs' attorney as aforesaid?

32. State fully the facts in reference to this requirement whereby employees were made to report one-half hour ahead of shift.

THOMAS BOND,  
Attorney for Plaintiffs,  
705 Olive Street,  
St. Louis 1, Mo.

Served as of March 26, 1946; by mailing copy of the above Amended and Additional Interrogatories to Mr. Russell Vandivort, Attorney of Record for Defendant.

THOMAS BOND,  
Attorney for Plaintiffs.

[fol. 44] (Answers of Defendant to Interrogatories propounded by Plaintiffs.)

(Filed April 20, 1946.)

Eastern District of Missouri  
City of St. Louis } ss.

Russell R. Casteel, being an officer of defendant competent to testify in its behalf, having been duly sworn, makes, upon information and belief, the following answers to the Amended and Additional Interrogatories Propounded by Plaintiffs Pursuant to Rule 33, in the above entitled cause:

Answer to Interrogatory No. 1:

Defendant is incorporated under the laws of the State of Maryland, and was licensed to do business in Missouri on September 11, 1941.

Answer to Interrogatory No. 2:

Defendant operated a manufacturing plant in St. Louis for the manufacture of ammunition, under the terms and [fol. 45] provisions of a certain contract between the defendant and the United States of America dated December 5, 1940, identified as Contract No. W-ORD-491, and various supplements thereto, over a period beginning in the month of December, 1941, and ending August 31, 1945. The plant was located at 4300 Goodfellow Boulevard, St. Louis, Missouri.

Answer to Interrogatory No. 3:

.30, .50 and .60 caliber, ball, tracer and armor piercing, small arms ammunition, all of which, including work in process, at all times belonged to The United States of America and not to defendant.

Answer to Interrogatory No. 4:

For the United States of America.

Answer to Interrogatory No. 5:

Brass, powder, lead, steel and various other raw materials, all of which, at all times upon and after their delivery to the premises by the various vendors, belonged to The United States of America and not to defendant.

Answer to Interrogatory No. 6:

From various places both in the State of Missouri and in other States of the United States; and from the United States Government, and more than two thousand other vendors.

Answer to Interrogatory No. 7:

Railroads, trucks, automobiles and airplanes.

Answer to Interrogatory No. 8:

Defendant had no premises, the entire manufacturing plant, including land, buildings, machinery and equipment, at all times belonging to and being in the possession of The United States of America and constituting a military reservation. On the said premises belonging to The United States of America and constituting a part of said plant there were various facilities for the receipt of material, including one (1) bulk receiving dock and approximately thirteen (13) individual receiving stations. On the said premises there were various facilities for the shipment of the products produced at this plant, including approximately thirteen (13) shipping docks located at the separate production units and storage warehouses. The said facilities were maintained by employees of defendant pursuant to the terms of said contract.

Answer to Interrogatory No. 9:

The switching facilities in use at the said manufacturing plant consisted of four (4) switch engines and various railroad tracks, all of which were, at all times, owned by The United States of America. The tracks were adjacent to all large production and storage warehouse units and connected with the lines of the Terminal Railroad Association at the West Belt Yards of the said Association. The tracks were maintained by employees of defendant and

the crews who operated said switch engines were also employees of defendant, pursuant to the terms of said contract.

Answer to Interrogatory No. 10:

There were three (3) covered loading and unloading docks for each large production unit, plus one (1) trucking dock, all used both for loading and unloading. At the bulk receiving dock and at the individual receiving stations referred to in the Answer to Interrogatory No. 8 there were maintained a supply of hi-lo lift tractors, and hand trucks, tractors, dollies, and at certain places overhead winches, and at the shipping docks referred to in the answer to Interrogatory No. 8 there were maintained the same type of facilities. All of these facilities were at all times owned by The United States Government and maintained by the defendant under the terms of the contract. The platforms which constituted the separate receiving and shipping stations or docks were located alongside of each of the eight (8) main production units and several storage warehouses.

[fol. 47] Answer to Interrogatory No. 11:

Employees of the defendant unloaded incoming freight, and under the direct supervision, directions and instructions of agents of The United States of America, loaded outgoing freight, all pursuant to the terms of said contract.

Answer to Interrogatory No. 12:

Defendant does not know where The United States of America shipped all of the ammunition produced at the said manufacturing plant.

Answer to Interrogatory No. 13:

Defendant does not know the names or addresses of the individual or individuals who designated the points to which the product was to be shipped.

Answer to Interrogatory No. 14:

Employees of The United States of America did the actual billing on out-bound shipments, the names of the individual employees being unknown to this defendant.

**Answer to Interrogatory No. 15:**

Employees of defendant, acting under the supervision, directions and instructions of employees or agents of The United States of America, all pursuant to the terms of the said contract.

**Answer to Interrogatory No. 16:**

Yes.

**Answer to Interrogatory No. 17:**

Yes, to the extent that employees were instructed when attending plant drills, blackouts and meetings outside of their regular shift to ring their time card upon reporting and upon leaving. Some employees apparently did not bother to ring in and out, and with respect to such employees the defendant has no record. In most instances these drills, blackouts and meetings were conducted on the employees' own shifts, and no separate record was kept.

[fol. 48] **Answer to Interrogatory No. 18:**

Yes.

**Answer to Interrogatory No. 19:**

No.

**Answer to Interrogatory No. 20:**

The records referred to in the Answer to Interrogatory No. 16 consisted of individual time cards.

The records referred to in the Answer to Interrogatory No. 17 consisted of individual time cards.

The records referred to in the Answer to Interrogatory No. 18 consisted of individual time cards and payroll checks.

There are no records referred to in the Answer to Interrogatory No. 19.

All such records are now kept at the St. Louis Administration Center, 4300 Goodfellow Boulevard, St. Louis;

Missouri; in the possession of the defendant, The United States Cartridge Company. The individual in whose custody they are kept is W. L. Schulte, Comptroller.

Answer to Interrogatory No. 21:

Yes, in four separate editions.

Answer to Interrogatory No. 22:

The different editions of the booklet were published in 1941, 1942, 1943 and 1944. A copy of the current booklet was handed to each employee immediately after completion of the details of employment.

Answer to Interrogatory No. 23:

The Safety Department was organized and set up under the supervision of the Personnel Director of the defendant. The Personnel Director employed a Chief Safety Engineer, who was placed in complete charge of the Safety Department. Under him he had an assistant and various sub-department heads, for fire fighting, sanitation, laundry, employee placement, explosive handling, etc. Under the various department heads there were safety engineers, who [fol. 49] were designated during approximately the first four months of operation as Safety Inspectors and thereafter as Safety Engineers. C. E. Stockland was Chief Safety Engineer from December 22, 1941, to May 21, 1944. J. T. McKittrick was Chief Safety Engineer from May 22, 1944, to March 24, 1946. S. F. Boedeker was Assistant Chief Safety Engineer from July 3, 1944, to October 5, 1945. An organization chart is attached hereto.

Answer to Interrogatory No. 24:

The computations were made under the supervision of W. L. Schulte, Comptroller, whose address is 449 Foreston Place, Webster Groves, Missouri, and J. L. Kelley, Payroll Supervisor, whose address is 5882 Cabanne Avenue, St. Louis, Missouri.

The names and addresses of the persons who actually made the computations are as follows:

C. H. Hobbs, 5447 Vera Avenue, St. Louis, Missouri

William McGuire, 2927a South 11th Street, St. Louis, Missouri.

E. F. Payne, 6910 Natural Bridge Road, St. Louis, Missouri

Louis H. Werner, Route 14, Affton, Missouri

H. B. Binnington, 6006 West Cabanne Place, St. Louis, Missouri

Answer to Interrogatory No. 25:

The information in the columns headed "Total Actual Hours" on the computations heretofore delivered to plaintiffs' attorney does not show the time elapsed between the punching of the card and the beginning of the shift; otherwise it shows all the time that appears on the time cards.

Answer to Interrogatory No. 26:

Yes, and, in addition, reflect the one-half hour lunch time each day when they were not required to be in attendance or on duty.

Answer to Interrogatory No. 27:

Not applicable.

Answer to Interrogatory No. 28:

No. For a certain time the employees were requested to report one half hour ahead of shift, but were not required to do so and were not docked or penalized if they failed to do so.

Answer to Interrogatory No. 29:

Not applicable. The request referred to in the Answer to Interrogatory No. 28 was in force from the middle of June, 1943, until about the latter part of September, 1943.

[fol. 50] Answer to Interrogatory No. 30:

No.

Answer to Interrogatory No. 31:

Not applicable.

Answer to Interrogatory No. 32:

As stated in the answer to Interrogatory No. 28, there was no requirement whereby the plaintiffs were made to report one-half hour ahead of shift.

Dated April 19th, 1946.

RUSSELL R. CASTEEL,

Subscribed and sworn to before me this 19th day of April, 1946.

My commission expires July 20, 1949.

MARGARET M. MEYER,  
Notary Public.

RHODES E. CAVE,  
R. H. McROBERTS,  
W. C. CONNETT IV,

1630 Boatmen's Bank Building,

St. Louis 2, Missouri,

Attorneys for Defendant The United  
States Cartridge Company.

BRYAN, CAVE, McPHEETERS &  
McROBERTS,

1630 Boatmen's Bank Building,  
St. Louis 2, Missouri,  
Of Counsel.

(This and subsequent missing or blank pages  
deleted as per stipulation, Record 1055.)

[fol. 52] (Request of Plaintiffs for Admissions by Defendant under Rule 36.)

(Filed April 24, 1946.)

To: The United States Cartridge Company, or Bryan, Cave, McPheeers & McRoberts, and Messrs. Rhodes E. Cave, R. H. McRoberts, and W. C. Connett, IV, Its Attorneys and Counsel of Record.

1. Plaintiffs state that shipping records of the outbound shipment of the ammunition produced at the plant operated by defendant herein were made at or about the time of said shipments and consist principally of bills of lading covering said shipments and that same are now located on the premises at which said plant was operated, to-wit, 4300 Goodfellow Avenue, in the City of Saint Louis, Missouri, and that the same are now under the control of either the defendant herein or the United States of America and are available to the defendant and are open to inspection by defendant. Plaintiffs also state that said bills of lading show the destination of said shipments and recite the route of movement of said shipments to said destinations, which is information relevant and material to the issues raised by the pleadings herein and which pleadings are now closed. That these records consist of a very large number of documents and in the aggregate are extremely voluminous and bulky, and to avoid the production and introduction in evidence of these excessive records, and to avoid burdening the record in this case with same, plaintiffs desire to introduce the following statement of matters contained therein as an admission and now request under the provisions of Rule 36 of the new federal rules that defendant admit the truth of the following statement, to-wit:

[fol. 53] That said bills of lading contain recitals and statements showing that at least the greater part of the ammunition produced at the manufacturing plant located at 4300 Goodfellow Avenue, St. Louis, Missouri, while same was being operated by defendant and during the time plaintiffs were employed therein was billed and shipped out of said plant by railroad or other form of transportation to destinations outside the state of Missouri.

Plaintiffs further state that unless the truthfullness of the foregoing statement is admitted they will introduce secondary evidence as to the contents of said bills of lading in proof thereof.

Plaintiffs further state that copies of the foregoing said bills of lading are not attached hereto for the reason that same are available to and open to the inspection of defendant at the place where they are now located, and further, because plaintiffs do not have copies thereof and because of the great number and size of said records it would be impractical to attach copies hereto.

2. Plaintiffs state that at their request and in order to avoid the production and introduction in evidence of a great quantity of time cards and other payroll records defendant has heretofore prepared and delivered to plaintiffs' attorney a voluminous set of computations showing in substance the name, badge number, dates of commencement and termination of employment, payroll periods, occupational code, total actual hours, rate, gross wages, certain deductions and net amount paid, computed as to each of the fifty-nine (59) plaintiffs herein and entitled "Safety Inspectors Earnings Summary".

Now, therefore, in order that there may be no question of plaintiffs' right to offer these computations in evidence and use them as admissions of the facts and figures therein recited, plaintiffs under the provisions of Rule 36 of the new federal rules request of defendant an admission of the genuineness thereof, and an admission that the said [fol. 54] computations as prepared by the defendant as aforesaid are correct and that they truthfully reflect what is contained in the defendant's records.

Plaintiffs state that copies of said computations are not attached hereto because defendant and its attorneys and counsel are [all ready] in possession of copies and also because defendant only supplied plaintiffs with one set of copies and that by reason of their size the making and attaching of additional copies is impractical and plaintiffs state that the copies furnished it by defendant are available and open to the inspection of defendant or its representatives in the office of plaintiffs' attorney at any time.

3. Admission is requested as to each and all of the foregoing matters by Monday, May 6, 1946.

THOMAS BOND,

Attorney for Plaintiffs,

705 Olive Street,

St. Louis 1, Mo.

I hereby certify that I served the above and foregoing Request for Admissions Under Rule 36 upon defendant and its attorneys of record by mailing a copy thereof to Messrs. Bryan, Cave, McPheeters and McRoberts, at their last known address, to-wit: 1630 Boatmen's Bank Building, St. Louis, Missouri, marked for the attention of Mr. Rhodes E. Cave, Mr. R. H. McRoberts and Mr. W. C. Connell, IV., on the 24th day of April, 1946.

THOMAS BOND,

Attorney for Plaintiffs,

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[fol. 55] (Reply of Defendant to Request of Plaintiffs for Admissions under Rule 36.)

(Filed May 6, 1946.)

Comes now defendant in the above entitled cause, and for reply to the request for admissions under Rule 36, states as follows:

1. With respect to the first request for an admission, defendant says that the shipping records alleged to consist principally of bills of lading are not now under the control of defendant, and are not available to the defendant, and are not open to inspection by defendant; that defendant does not know where the said records are located, and that the defendant has never seen such records and does not know the contents thereof.

Wherefore, defendant states that it cannot truthfully either admit or deny the statement:

"That said bills of lading contain recitals and statements showing that at least the greater part of the

ammunition produced at the manufacturing plant located at 4300 Goodfellow Avenue, St. Louis, Missouri, while same was being operated by defendant and during the time plaintiffs were employed therein was packed and shipped out of said plant by railroad or other form of transportation to destinations outside the state of Missouri."

2. With respect to the second request for an admission, defendant says that the defendant admits the genuineness of the set of computations referred to in said request; admits that the said computations are correct, and that they truthfully reflect what is contained in the defendant's records—

except that defendant states that the said computations do not reflect a deduction which should be made [fol. 56] for the one-half hour lunch period each day when each of the employees covered by such computations were off duty, and to that extent the computations include one-half hour's time each day for each employee when each such employee did not work, and which time should be deducted in computing hours worked in excess of forty hours per week; and except, further, that all computations showing time beyond the employees' regular shifts were computed on the basis of full six minute periods or multiples thereof, i. e., any number of minutes less than six minutes were disregarded.

RHODES E. CAVE,  
R. H. McROBERTS,  
W. C. CONNETT IV,

1630 Boatmen's Bank Building,  
St. Louis 2, Missouri,

Attorneys for Defendant  
The United States Car-  
tridge Company.

BRYAN, CAVE, McPHEETERS & McROBERTS,  
1630 Boatmen's Bank Building,  
St. Louis 2, Missouri,  
Of Counsel.

Eastern District of Missouri } ss.  
City of St. Louis }

R. H. McRoberts, agent and attorney for defendant, having been duly sworn, states upon information and belief that the foregoing Reply to Request for Admissions Under Rule 36 is true and correct.

R. H. McROBERTS.

Subscribed and sworn to before me this 6th day of May, 1946.

My commission expires July 4, 1949.

RUTH F. WEAKLY,  
Notary Public.

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[fol. 57] (Memorandum relating to filing of Amended Answer of Defendant to Interrogatory No. 22.)

By leave, def't. files amended answer to Interrogatory No. 22.

WILLIAM C. CONNETT IV,  
Atty. for Deft.

May 15

Approved

R. M. H.

Filed, May 15; 1946.

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[fol. 58] (Amended Answer of Defendant to [Interrogatory] No. 22).

(Filed May 15, 1946.)

Eastern District of Missouri } ss.  
City of St. Louis }

Russell R. Casteel, being an officer of defendant competent to testify in its behalf, having been duly sworn, makes, upon information and belief, the following amended

answer to Interrogatory No. 22 proponnded by plaintiffs in the above entitled cause:

**Amended Answer to Interrogatory No. 22:**

The first edition of the booklet was published in 1941, and was distributed during the period from some time in August, 1941, to some time in November, 1941; the second edition of the booklet was published in 1941, and was distributed during the period from some time in November 1941, to some time in April, 1942; the third edition of the booklet was published in 1942, and was distributed during the period from some time in April, 1942, to some time in December, 1942; the fourth edition of the booklet was published in 1942, and was distributed during the period from some time in December, 1942, to some time in February, 1944. A copy of the current booklet was handed to each employee immediately after completion of the details of employment.

Dated May 13th, 1946.

**RUSSELL R. CASTEEL.**

Subscribed and sworn to before me this 13th day of May, 1946.

My commission expires July 20, 1949.

**MARGARET M. MEYER,**  
Notary Public.

[fol. 59]

**RHODES E. CAVE,**

**R. H. McROBERTS,**

**W. C. CONNETT IV,**

1630 Boatmen's Bank Building,

St. Louis 2, Missouri,

Attorneys for Defendant

The United States Cartridge  
Company.

**BRYAN, CAVE, McPHEETERS & McROBERTS,**

1630 Boatmen's Bank Building,

St. Louis 2, Missouri,

Of Counsel.

Copy of the foregoing amended answer to Interrogatory No. 22 served upon plaintiffs' attorney by forwarding a copy in the United States mails on this 14th day of May, 1946.

W. C. CONNETT IV.

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[fol. 60] (Transcript of Testimony and Proceedings.)

(Filed October 29, 1947.)

District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

R. M. Powell, et al.,

vs.

Plaintiffs,

} No. 3597.

The United States Cartridge Company,  
Defendant.

Be It Remembered, that beginning on the 8th day of July, 1946, this matter was called for hearing in the United States District Court in above District and Division, New Federal Building, St. Louis, Missouri, before Hon. George H. Moore, Judge Court No. One; Whereupon, the following proceedings were had:

Appearances:

For the Plaintiffs:

Thomas Bond, Esq.

For the Defendant:

Robert H. McRoberts, Esq.  
John L. Donnell, Esq.

Counsel Present Listening to the Evidence:

Samuel P. McChesney, Esq.  
Joseph I. Nachman, Esq.

[fol. 61]

## Proceedings:

The Court: I will call today's docket: R. M. Powell vs. United States Cartridge Company.

Mr. Bond: We are ready, Your Honor.

Mr. McRoberts: We are ready, Your Honor, with these slight qualifications: I find in some computation which I furnished to Judge Bond earlier in this case there were some errors. I called them to the attention of Judge Bond last Friday, as soon as I discovered them; and we are going to have some new computations made. They are not ready today, but I assume we will be given time to make these computations before the matter is finally disposed of.

The Court: Very well.

Mr. Bond: I believe Mr. McChesney wants to introduce his associate Mr. Nachman.

Mr. McChesney: It is for the purpose of sitting in and listening to the evidence in this case, not as an appearance.

Mr. Nachman: Your Honor please, there are a number of issues that could be raised in this case which the Administrator is interested in, and during the course of the day we would like to ask an order from you giving us leave to file a brief.

Judge Bond: We would be glad to have his brief, Your Honor.

[fol. 62] Mr. McRoberts: Before we commence in this case I would like to ask leave to file an amended answer to Interrogatory No. 25. And in that connection I might state that some months ago we furnished to Judge Bond some rather lengthy computations showing the number of hours worked by the different claimants in this case as shown by the time-cards. And in this Interrogatory 25 the question is asked whether or not those computations show all of the hours that are reflected on the time-cards. And we made the answer before that we had showed all of the hours, with certain exceptions. Judge Bond subpoenaed certain of these time-cards to be brought into Court, and they were brought to my desk last Friday

and on comparing the time-cards against the computations furnished to Judge Bond, and the explanation which we had given as to the method of making these computations we discovered that the figures were correct but the explanation was erroneous. I immediately advised Judge Bond, first by telephone and then by letter, and now ask leave to file an amended answer which sets forth the correct theory of the computation as we now understand. I have just furnished Judge Bond with a copy of this.

Mr. Bond: I have to object to that, if Your Honor please, for the reason that I have prepared this case on the faith or fact I would be entitled to admissions which were made in answer to my interrogatories. And now he comes in [fol. 63] by application this morning, preceded by telephone call last Friday, in which he wants to clarify one of these admissions. It seems that when he gave me these pay roll summaries that he told you about, last January, containing the pay roll information necessary to support the claim of the plaintiffs my people advised me that it didn't include certain half hours which they were required to report to the plant before the shift started. To be sure of that I asked him in my interrogatories if he included all the time. And he said "Yes, with the exception of that half hour," which he admitted was not included. And then these figures have to be translated to hourly rates. And then we computed it at great trouble and expense. I have made my computation relying on the information then furnished, which I am still informed is correct. Now, he comes in at the last minute and wants to amend that out of time. The time in which to answer the interrogatories has long expired. It would carry no extension of time. And he comes in and wants to modify that answer which includes not all of it, but less than that. And he says, later on, he will give us the figures.

I think the purpose of these rules in asking interrogatories and getting answers is that you can get admissions you can rely on in preparing your case and shorten the proof. If he can come in the last minute and say, "I was wrong about one," he can withdraw all and put me in [fol. 64] utter confusion. I submit I am entitled, for the

benefit of this case, to that admission which I thought was the fact until this morning. And no doubt, if there is some explanation that would have a bearing on his defense in that admission, I have no doubt the Court would hear it and consider it along with the admission. If there is any inaccuracy in that admission it would be up to him to show correct computations based on the correct facts. But I do not think he can come in here and amend his answers to the interrogatories and disturb the admissions that have been of record for months and that I have relied on in drawing my case. I object to it.

Mr. McRoberts: There can be no real dispute as to the ultimate facts because it is purely a matter of arithmetic or computation. In other words, we have the time-card only for each employee for each week, and there are some ten thousand of those involved in this lawsuit. The figures are there and we cannot deny nor can Judge Bond deny what those figures show. There was furnished to Judge Bond, at his request, certain computations which were made from these time-cards for Judge Bond's convenience, and the only question in here is as to how these computations were made. Once the original documents are in evidence there can be no dispute as to what they show and what the computations are. But the figures furnished to Judge Bond are misleading and I think that the [fol. 65] Court would want and everyone would want to have the actual facts in this case.

(Counsel and the Court confer at Court's Bench.)

The Court: Do you not suggest that the Court might reserve its ruling.

Mr. McRoberts: I think that would be all right.

The Court: All right, the Court will reserve its ruling.

Mr. Bond: May I proceed, Your Honor?

The Court: Proceed.

Mr. Bond: I believe since the proceedings are very voluminous it would clarify and focus the matter if I made a brief statement of the facts:

I want to prove this is a group action under 16b of the Fair Labor Standards Act to measure the overtime compensation provided in Section 7a of the Act by a group of employees of the defendant. The answer admits the incorporation, the jurisdiction of the Court, the employment of the plaintiffs for the periods and at the base pay averred, and denies specifically other averments, but pleads affirmatively that those employees were exempted from the benefits of the act under the Administrator's definition of administratives.

Second, that they were not engaged in the production of goods for commerce within the meaning of the act. And, third, that as to certain plaintiffs prior to certain dates the claims are barred by the Statute of Limitation.

[fol. 66] Now the facts are in general, Your Honor, that this defendant United States Cartridge Company operated what was known as the St. Louis Ordnance Plant. That was an armaments plant built as part of the preparedness program back in 1941, and after Pearl Harbor was used as a vast armaments undertaking operated by the United States Cartridge Company for the production of military ammunition—thirty, fifty and sixty tracer bullets for the use of rifles and machine guns, and was a great big industrial layout out here on Goodfellow Avenue comprising a great many very extensive buildings and employing over forty thousand employees. And during the period of this operation it operated what the evidence will show were literally billions of bullets that were shipped to every part of the world. Now then, at that plant it was equipped with loading docks and receiving stations, and switch tracks and sub-stations, and loading facilities, all of which were maintained for defendant's employees. In the production of this military equipment and ammunition it was engaged in interstate commerce in that it imported into Missouri vast quantities of raw materials which it bought from industries outside of Missouri and shipped into Missouri, principally brass, steel, lead and powder, most of which was produced by the defendant and some by the United States Ordnance Department, but the greater amount of the volume of all of this principally raw materials, with the possible exception of powder, was shipped in by the instrumentality of interstate commerce from points outside

of Missouri to points in Missouri. Records illustrative of that will be produced. Now then, the manufactured product was shipped from the plant to the armed forces and supply depots and to other contractors for transshipment to the armed forces on the battle fronts. The theory was that upon manufacture being completed and acceptance by the United States Army Ordnance, the defendant's employees would load crates and move them down to the loading docks, put them into the cars, seal and brace and block them, and they would then be sealed under the supervision of the Army Ordnance and moved out to the destinations designated by the Army Ordnance. All of the work of that loading and bracing and so forth was done by employees of the defendant, and defendant's employees or yard-masters out there checked the billing for quantity and [routeing] before turning it over to the Terminal agent. Records disclose and those facts will be produced. And so we will say that the proof will show that the defendant was engaged in interstate commerce, the goods produced were produced for interstate commerce, and that they were being produced for interstate commerce.

The plaintiffs' evidence will show they had reason to believe that such was the fact at the time of production. [fol. 68] The surrounding circumstances will warrant that inference, and there will be written documents introduced or publications at the plant showing actual knowledge that all of this ammunition was destined for transshipment out of Missouri. Now, in connection with that ammunitions effort that I described they have as an integral part of that an organized Safety Department. It was not only for the humanitarian purpose of protecting the employee but it had a very important connection with production, in that the organization and operation of the Safety Department prevented accidents, prevented [breakdowns], and prevented absenteeism, and had an effect on production and was interwoven with production. That Safety Department was under the direction of a director who had sometimes as many as three directors, generally one or two, that had supervision over about one hundred safety men, called at times Safety Inspectors, at other times Safety Engineers. They included the plaintiffs in this case. These hundred or so safety men were assigned three to each

operating unit, one for each shift. And one of the three was designated as foreman or supervisor over the others; but he had no authority over the others and did the same work that the others did, and the only thing that differed from the others in the main was to include the reports to him and transmit them in his reports to the director and [fol. 69] director's assistant. But the evidence will show that the policy-making authority, the exercise of independent judgment and discretion, did not go below the director and his assistant. Now then, the duties of these plaintiffs, as the evidence will show, the regular duties were to patrol, to inspect and report. They were just routine inspectors. They patrolled buildings and determined things like the existence of slippery floors, or what is called bad housekeeping. They patrolled the machines and noted the presence of guards and other safety equipment. And they noted the employees to indicate the wearing of safety equipment, such as hair nets and goggles, and observation of safety practices. When ~~in~~ the performance of that patrol and inspection duty the hundred men forming that routine duty noted any infractions. And then the further duty remained upon them to do two things: They first reported evidence of infractions of the safety rules, which were dangerous safety practices of employees, to the Foreman of Supervision for correction. Note that it was the production employees' foreman to which they made the report for correction, and it was his responsibility to correct, not the Safety Department's. The report for correction was made to the supervising personnel over the employee who was not observing the safety practices. Then at the end of the day in their daily report to their own foreman or supervisor, they reported the occurrence for investigation, and he relayed that report in his report [fol. 70] to the director's office. But, as above stated, no authority—Oh, I forgot to state that in connection with these infractions the safety men had no authority to take any corrective action himself. He couldn't speak to or reprimand an employee, nor even speak to him. The orders on that were very explicit, and violations entailed dismissal. So the evidence will show clearly that there was no actual authority below the Director's office.

Now then, as to the employment of these plaintiffs, if I

may get a sip of water. They were employed at stated salaries for a 40-hour week. At the time of their employment a little booklet was given in which forty hours was stated to be the regular nonovertime work week at the plant, and that work in excess of 40 hours would be compensated and was according to the provisions of the Fair Labor Standards Act. Notwithstanding they were employed at stated salaries for a nonovertime 40-hour work week and required to work overtime, this group was not compensated in accordance with Section 7 of the Fair Labor Standards Act, which says they must be paid at one and a half times the regular rate. Section 10c of the Act requires the defendant to keep pay roll records, and he has at my request given me summaries containing the pay roll information as to these fifty-nine plaintiffs. It will be introduced in evidence. It contains the work week, the actual hours worked, and gives the weekly wages.

[fol. 71] I should mention here that while that act, the Fair Labor Standards Act, uses the words "hourly rates," the courts have uniformly held from the Supreme Court down that it does not exclude employees whose compensation is measured by other standards, such as piece-workers or salaried workers, that in such cases as in cases of salary worker the gross weekly wage must be translated into an hourly rate. I have, therefore, translated these gross wages which they reported to me into similar computations whereby I have broken them down to the hourly rate. For example, if the gross wage was fifty-one ninety-two as the first item I see here, and the work week was 40 hours per week, the hourly rate would be fifty-one ninety-two divided by forty, or one thirty, which was the regular hourly rate at which he was employed. Then applying one fifty percent of one thirty for overtime they report each week I get the overtime compensation due that employee for each week. For example, if the employee worked 48.3/10 hours, applying one thirty one and a half, and the one ninety-five to the extra, you get \$16.18 as the overtime due the employee for that week. Now, totalling that on the adding machine gives the total claim of each plaintiff. So if Your Honor after hearing the case agrees that the method of computation is correct then the record will show in these two sets of exhibits, which are numbered to

correspond, the exact amount due each plaintiff on the defendants' own figures.

[fol. 72] That I believe in a general way states the case.

Mr. McRoberts: Your Honor please, I don't believe we would care to make a statement at this time; but I would like to raise the question as to the procedure to be followed in this trial. There are fifty-nine separate plaintiffs, each plaintiff has a separate claim, but no one plaintiff is bound by another's claim. It is obvious that the testimony as to certain facts will be the same in each case, the business or what the defendant is doing and how the defendant conducted its business, that will be the same, but the testimony with respect to each individual will be different. The testimony as to his duties, his occupation, the exercise of judgment and discretion, whether he is or is not an exempt employee, in general that will be different, although I can well understand why some would be grouped together and being about the same types of work, but there are substantial differences between the various plaintiffs. But of course, with respect to the employment of the different plaintiffs, it varies. They were employed at different times at different rates of pay, some employed on an hourly basis, other jobs, and ultimately transferred into the Safety Department. Some were employed directly in the Safety Department. And some were teachers, some instructors, some supervisors, some plain safety engineers. [fol. 73] and so forth. Now, if we have to try each one of these cases separately we are in for a very long, tedious trial. I don't know what Judge Bond's course of procedure is going to be, or what Your Honor's thoughts are. I do know this: that in one of these cases that was tried in St. Paul last year which involved the Federal Cartridge Company, another company operating a plant identical with this only smaller, and operating it under the same principle and same contract, they had 160 some odd plaintiffs, and the Court there made an order directing the plaintiff to select out of the group some twelve plaintiffs' cases for trial and set them aside, the claims of the other plaintiffs, for further action of the Court. And those twelve cases were tried, and I am informed it took twenty-four trial days to try those cases. I think possibly some consideration as to the procedure here would be in order.

Mr. Bond: I don't follow you as to the burden on the plaintiff at all. The Fair Labor Standards Act, the main purpose is presumed to include all employees engaged in the production of goods for commerce, which they admit in their answer these men were employed by them for the periods they say they were employed. We expect to prove that they were engaged in the production of goods for commerce. They are, therefore, presumed to be under the Act and the burden is upon you to plead and prove exemption [fol. 74] and whatever is necessary to be heard on that will have to come as part of the defense. I don't expect to put anything like fifty-nine men on the witness stand. I intend to put a few men on to prove the general features of this case, and that the [other] were similarly situated. I intend to prove the exact amount due them by computations which are mere arithmetic made from figures they have given me. I can't see that what I have here and expect to put in can take more than a full couple of days' testimony. That would seem to me to be all the time I would need. Now, if he thinks he is going to have to take more we will have to see when we get to it.

The Court: I do not know that I understand the case as followed in Minnesota. They had 160 defendants and the Court made an order only twelve cases be heard.

Mr. McRoberts: Your Honor, the opinion of the Court starts out with the statement—

The Court: What judge was that before?

Mr. McRoberts: That was tried before Judge Joyce, and the opening paragraph says: "This is an action by Frode Anderson and eleven other plaintiffs for recovery of varying amounts of overtime compensation, liquidated damages, attorneys' fees and costs under the Fair Labor Standards Act of 1938. The action is in the nature of a class suit in which there are some 164 individual plaintiffs, employees [fol. 75] and former employees of defendant, but pursuant to order of court plaintiff's counsel has selected these twelve individual plaintiffs for trial. The remainder will be held until the determination here."

Now, I telephoned to one of the Counsel, Mr. Hammond, whose name appeared here and asked him about the order,

how it happened to be made. And he told me in substance that either at a pre-trial conference or at the opening of the trial that when it appeared that each of these claims was a separate claim and that the plaintiffs did different work and that it was going to be a very long-winded, tedious trial, that the Court entered this sort of an order and these twelve cases were selected and tried. They are not res adjudicata as to the other cases, but it was felt that the disposition of these twelve cases, being typical would guide the Court and parties in the disposition of the remaining cases. And it was tried that way. And he told me, incidentally, that an appeal was taken and just argued last month, I believe, in the Court of Appeals.

Mr. Bond: I know nothing in a general way about the case. I do not think it is in shape where Your Honor could find any precedent in what was done. I heard about it not long ago, and I got a copy of the brief, and the thing was prepared and briefed in the most remarkable fashion in the world. I got the impression that the Judge and a great number of people who were of different classifications.

[fol. 76] The Court: I wonder if each one of the twelve were in a different classification?

Mr. Bond: It was all by stipulation. I got the impression if there was an order made I think it was in pursuance of an agreement of counsel in chambers to meet the exigencies of that particular case. But my point is here, we have a right to bring a group action on behalf of all people similarly situated. They can join in the same petition. I expect to prove fifty-nine men were similarly situated. I will prove the duties, that they had similar duties, and the testimony I will give as to what the duties were will be that they were the same as to the whole fifty-nine. And it seems to me it is purely a matter of defense to pick some fellow out and show he was not, Your Honor.

Mr. McRoberts: We will object strenuously to one witness getting on the witness stand and saying such and such a thing and the others did a certain thing. In some instances I believe the duties were identical but you will

find quite a variation in the duties of these plaintiffs, they differed at different times. I think we are entitled to have the plaintiff, if he is going to make a claim, get on the witness stand and say what his duties were, to permit us to cross examine.

Mr. Bond: I don't have to go any further than to prove [fol. 77] they were employed at the plant and engaged in the production of goods for commerce, and then the law is presumed to cover them and it is up to the defendant to make an affirmative proof. I only say that for the purpose of showing work was interwoven with production.

Mr. McRoberts: Witnesses have to get upon the witness stand and show, the burden is on the plaintiff to show that they in their work did produce goods for commerce. And I do not see how any plaintiff can make that proof without going on the witness stand.

Mr. Bond: Well, we will show you.

The Court: All right, proceed.

Thereupon, plaintiffs to sustain the issues in their behalf, offered and presented the following evidence:

FRANK N. HARRIS,  
of lawful age, produced, sworn and examined, testified on behalf of plaintiffs as follows:

Direct Examination by Mr. Bond:

Q. Will you state your full name, Mr. Harris?

A. Frank N. Harris.

Q. And where do you live?

A. I live at #6 Lakeview Court, Ferguson, Missouri.

[fol. 78] Q. What is your present occupation?

A. I am office Manager St. Louis County Bus Company.

Q. What is your age? A. Forty-three.

Q. Are you the F. N. Harris, one of the plaintiffs in this case? A. I am.

Q. Were you employed during the World War during the period mentioned in this complaint, with the United States Cartridge Company? A. Yes, sir.

Q. When did you go to work for them?

A. My original employment with the Cartridge Company was [fol. 79] February, I think the 13th, 1942.

Q. Where did you go to get your job?

A. I went to 3000 Locust.

Q. And what occurred there?

A. Well, I was interviewed by a so-called interviewer, and at that time was told that the only thing they could consider me for was the position of—in the lobby of the Administration Building. I think the title of the job was—I can't recall the name of the title, but my purpose was to greet the people that came to the Administration Office to see the management and to see that they were introduced to the management.

[fol. 79] Q. Did you go to work in that capacity? A. I did.

Q. And how long did you continue in that capacity, what did you receive as pay in that capacity?

A. One hundred and fifty dollars a month.

The Court: What capacity is that?

A. I recall the name, it was Receptionist.

Q. And were you later or did you later transfer into the Safety Department? A. I did.

Q. What was the date of that?

A. I think it was the 31st of May.

Q. 1942? A. That is correct.

Q. And in what capacity? A. As a safety inspector.

Q. And what were the employment terms?

Mr. McRoberts: Just a moment. Object to that, it calls for an opinion of the witness.

Q. (Mr. Bond) State the facts in reference to it?

A. I was employed at a salary of \$200 a month.

Q. Now, at or about the time of your employment, were you given a little booklet entitled, "Your Job at the St. Louis Ordnance Plant?" A. Yes, sir, I was.

[fol. 80] Q. I hand you there what purports to be, four of them, which would be in the editions for 1941, 1942, 1943

and 1944. Do you recognize those as the booklets that were handed to you and other employees?

A. Yes, sir, I do.

Q. Now, describe in a general way this plant out there when you went to work in this Safety Department.

A. It consisted of an Administration Building, and I believe there were eight production units. The plant was divided into two sections, one known as the restricted area, and the other was a general productive area. There were two power units in the area, and the entire plant was covered with railroad tracks and also concrete driveways.

Q. About how many employees were out there, do you know?

A. I don't know exactly; but I believe the company claimed at the peak of their production there were in excess of 40,000 people employed.

Q. What was produced at the plant?

A. Small arms and ammunition.

Q. Now then, when you entered this safety department on May 31, 1942, what duties were assigned to you?

A. I was told that I would be assigned to an inspector by the name of Burke, who at that time had been assigned to a certain area which consisted of all of the loading primer insert buildings in the plant of which there were [fol. 81] eight of each. I was told to stay with that man until told otherwise, observe everything there and by observation learn what my duties were.

Q. And what did those duties turn out to be?

A. We patrolled this given area which consisted of eight loading and primer insert buildings and the powder magazine, which were part of the operations. We patrolled and inspected or looked with regard to the powder magazines, and checked and determined that the amount of powder in storage there did not exceed the maximum set by the Ordnance Safety Department. And the buildings were checked for good housekeeping to see that all employees wore the required safety equipment, such as safety shoes and safety goggles; and check the machines to see they were properly guarded, that there were no accumulations of excessive powder or primers in the Primer Building, and checked for the same conditions, and in addition thereto to determine whether there were any excessive

storage of primers in the magazines, and finally to determine [whether] or not people were observing safe practices.

Q. Now then, can you give us an example of what you did out there from the time you went out there until you checked in in the morning until you checked out at night, in a general way from recollection? This would be in the Production Department unit, that you are talking about now, wouldn't it?

A. They were Production units, yes, sir. Although the [fol. 82] particular buildings were part of the production of the Cartridge. On the day shift they arrived at a little prior to 7:30, which was our time on that shift to be there and be ready for duty. We arrived a little before that time and went downstairs where we had lockers to keep our clothes which were furnished us by the company. We were required, of course, to wear special-duty clothing or uniform, either one. The first job, of course, was to change clothes and get in this uniform. Then at approximately a quarter of the hour, or a quarter of eight in this case, we were supposed to leave the unit and travel to our certain area to which we were assigned, where we were supposed to meet the inspector who had been on duty the preceding eight hours and who was about to go off duty. We conferred with him and determined what conditions he found, if any, that hadn't yet been corrected and needed correction. And by that time, of course the change of shifts occurred, and we then proceeded to our daily duty of the day which, as I stated before, required us to patrol, inspect, and, in the event they found a violation or condition that needed correction, we were instructed to not contact the employee who was in violation but to report the occurrence to his foreman, and if we failed to get any co-operation there, to go to his superintendent.

Q. That foreman or superintendent, would he be a Safety Department foreman or be the employees' foreman?

[fol. 83] A. No, sir, he was the employees' foreman, no connection with the Safety Department.

Q. Go ahead.

A. Then an added duty, we kept a log in which we kept a record of the infractions we discovered or conditions we discovered that needed correcting. We also kept a re-

ord of what we did to get the situation corrected. And at the end of the day, of course, we were required to file a written report with our own foreman or supervisor who then in turn transmitted it to the director. In addition to these other duties that I recited before in each one of the eight production units in each of these eight buildings was a first-aid room and worked three shifts. They employed a nurse, and it was our job of course to keep in touch with these first-aid units and pick out the report that the nurses had written on all these first aid cases. We were then required to take those slips out, find the employee who had sought first aid, get a description from him or her of the accident, how it occurred, what caused it, and if it was something that could be corrected we were supposed to instruct the employee how to avoid a similar occurrence in the future. And they had a form that we completed on each one of the occurrences and filed with our supervisor or foreman at the end of the day.

Q. Now then, these buildings that you speak of that you patrolled, these machines that you inspected, these employees [fol. 84] that you observed; were they the buildings, the machines and employees who were engaged in producing the ammunition at the plant? A. They were.

Q. Now then, who was there at the head of the Safety Department? A. A man by the name of Strickland.

Q. What was his title? A. Safety Director.

Q. Did he have any men under him?

A. Yes, sir, originally he had I believe three assistants.

Q. And these assistants, who were they? Who came?

A. Well, one was a man by the name of McKittrick, another by the name of Hurtling. And he had several, of course, during the time that I was there. Another was a man by the name of Hirchburger.

Q. You didn't understand my question. You are giving me the director and his assistants? A. That is right.

Q. Now over whom did they have supervision? That is what I want to know—and authority.

A. That director and his assistants and supervisors, the large group of men of which I was one?

Q. That is the point. And that large group of men of which you were one, did they have any title or designation? [fol. 85] A. Yes, sir."

Q. What were they called out there?

A. Safety Inspectors at that time.

Q. And later was that title changed?

A. To Safety Engineer.

Q. Attendant on that change in title was there any change in duties?

Mr. McRoberts: Just a moment. Limit that to this witness, the change in duty.

Q. As to yourself? A. None whatever.

Q. Now then, did the defendant get out, or did the safety director get out any general instructions out there, in typewritten form, to be observed by the safety engineers?

A. Yes, sir.

Q. I show you here a blank book and ask you what it is?

A. This is a set of general instructions.

Q. The first two pages, limiting yourself to a set of general instructions which were issued to all safety inspectors or safety engineers, by whom were they issued?

A. They were issued by the Safety Department through the Educational Division of the Safety Department.

Q. To whom were they issued?

A. To the safety inspectors.

Q. And whom did the safety inspectors include?

[fol. 86] A. Myself.

Q. And did it include all other safety inspectors?

A. It did.

Q. Whether they were engaged in that unit or some other unit or all the units, these are the general instructions under which they acted? A. They were—

Mr. McRoberts: Just a moment.

The Court: Wait a minute. When you see Counsel getting up, don't answer.

Mr. McRoberts: Object to this witness testifying as to what instructions were issued to all other safety engineers unless he was present at the time the instructions were issued to all of them.

Mr. Bond: He was working at that plant for four years in that department. He knows to whom general instructions were issued. He is bound to know it.

Mr. McRoberts: If he was present when all of them were issued, I have no objection.

Q. What do you know about the book and its issuance?

A. As I told you, this book was issued by the Educational Division of the Safety Department. And when I entered the department as a safety inspector they set up a provision whereby we were required to attend a meeting once each week. And I can only talk with reference to men [fol. 87] who attended the meeting and on the same shift I was, of which there were perhaps some 30 or 35 on my shift, and the majority of these men attended these meetings weekly. And the first meeting we attended we were given, all of us, this book and told these were the general instructions for the safety engineers, and they outlined the duties of the safety engineers briefly.

Mr. Bond: I ask that be marked—in arranging my procedure I have got some other exhibits that come, A, B, C, D and E—I will ask this be marked "Plaintiff's Exhibit F". (The book is marked as requested) And I now offer in evidence all that part of pages 1 and 2 commencing with the title, "The Duties of the Safety Engineers Shall Be As Follows," and ending with the words "this section."

Mr. McRoberts: Your Honor please, I think the entire exhibit should be offered in evidence, since the witness has testified that the entire exhibit constituted the instructions given them.

Mr. Bond: Now, if Your Honor please, I don't regard this entire book as being necessary or material to anything in the case. I have identified the book. If he does, it is up to him to introduce it.

The Court: It will be offered subject to the defendant's objection.

[fol. 88]

**Plaintiffs' Exhibit F.****General Instructions****The Safety Engineer:**

One Safety Engineer will be assigned to each unit or special function of plant operation.

The Supervising Safety Engineer on each shift is responsible and will answer for the Safety Engineers, who are working on the shift of which he is in charge, all questions and problems which occur during the shift and cannot be handled within the unit.

Once weekly, or at any other time he deems it necessary to do so, the Supervising Safety Engineer shall have a meeting with all of the Safety Engineers over whom he has supervision. At each meeting all problems incidental to the units will be discussed, as well as Instructions incidental to training or departmental procedure.

**The Duties of the Safety Engineers shall be as follows:**

1. To see that the proper Safety Equipment is provided for and worn by employees at all times.

A. Violations of the rules pertaining to the use of personal protective equipment, such as the failure to wear glasses, the failure to wear the approved types of hair coverings; the failure to wear safety shoes; the wearing of jewelry; the operation of machinery that is defective or unguarded or inadequately guarded will be reported to the Supervising Safety Engineers by the Engineer in each unit on each shift. The procedure to be followed in making this report and the corrective action to be taken on these infractions of rules is as follows:

1. Upon noting infractions of Safety Rules the Safety Engineer will procure the badge number and the department number of the person or persons who are violating the Safety Rules.

2. He will then report the badge number and the nature of the violation to the offender's foreman or supervisor.

3. At the end of each working shift, each Safety Engineer will submit a report to his supervisor in regard to these violations.

This report will be made on the Safety Inspection Report form, IRS-25 and will embody the following information:

1. The badge number of the person who violated the Safety Rule.

2. The number of the department in which the violator is employed.

[fol. 89] 3. The nature of the violation.

4. The name and badge number of the foreman or supervisor of the department in which the violator is employed.

5. The reaction of the supervisors upon receiving the reports of these violations will be noted by the Safety Engineer, and he will incorporate in his report his comments on the supervisor's attitude.

6. The Safety Engineer will not attempt any correction of these violations by contacting the individuals who are guilty of these violations. In all cases he will contact the supervisor of the individual concerned and will leave corrective action to the supervisor.

7. This report will state the working shift during which these incidents occurred. The shift check in the upper right hand corner will not be used in making this report. Instead, each Safety Engineer will write the date and the time of his working shift at the top of the report page in this manner—

January

8 A.M.	—	4 p.m.
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4 P.M.	—	12 Midnight
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12 Midnight	—	8 A.M.
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Should not violations exist during the working shift, a report of such condition will be made in the manner as is outlined above. Consult sample report which is included in this manual.

An exception to this rule will be made where an employee is engaged in some operation, whereby death or serious injury may result. Should this condition exist the Safety Engineer will stop the hazardous operation and will immediately seek the supervisor of the person who was performing such act and will report the incident to him and will explain in detail why he caused such operation to be stopped.

2. To observe and correct unsafe methods and conditions and to observe and correct any unsanitary or unhealthful condition.

These observations will be incorporated in the daily log. Items of major importance will be covered by a separate report. In obtaining corrective action on unsatisfactory conditions which may be found, the same flow will be followed as is outlined in item X of this section.

[fol. 90] B. (Check list of mechanical items)

1. Machines and equipment, belts, oiling devices, tools, and appliances.
2. Guards and Safety Devices.
3. Ropes, tackles, chains, all hoisting equipment.
4. Conveyors, trucks, overhead cranes, motor vehicles.
5. Electric motors, switches, wiring, etc.
6. Ventilation; dust protective equipment; fans; exhaust systems.

7. Acids, caustics, chemicals, gases, their storing methods of supply, explosives, cutting oils and compounds.
8. Heating and power equipment, boilers, engines, power line shafts and all accessories, fuel storing and firing equipment.
9. Material in storage, piled material, space between materials, safe floor load, etc.
10. Lighting—adequacy of illumination.
11. Housekeeping, sanitation, hygiene.

#### C. (Check list of unsafe practices)

1. Do employees operate tools, appliances, or other equipment without authority?
2. Do employees work or operate at unsafe speeds?
3. Have guards been removed, or have guards or other Safety Devices been rendered ineffective?
4. Do employees use defective tools or equipment or use tools or equipment in unsafe ways, or use hands or body instead of tools?
5. Do they overload, crowd, or arrange or handle objects unsafely?
6. Do men stand or work under suspended loads, open latches, or shafts or scaffolds or ride loads or get on or off equipment or vehicles in motion, etc.?
7. Do employees repair or adjust machinery in motion, under pressure, electrically charged, etc.?
- [fol. 91] 8. Does anyone distract the attention of or startle workers?
9. Is there any failure to use Safety Devices?
10. Are there any other unsafe acts of persons?
3. To see that any injured employee, no matter how slight the injury may be, is given First Aid immediately.

If it is necessary to summon an ambulance call Sta. 400; then notify the Supervising Safety Engineer of the accident, giving the following information:

- (a) The name of the injured person.
- (b) The badge number of the injured person.
- (c) The place of the occurrence of the accident.

- 4. To make out the proper reports on all accidents.
- 5. To report to the Supervising Safety Engineer once each hour during the working shift. (Sta. 763)
- 6. To turn in a daily log. This log will be written on the Form IRS5, and will embody a report of all accomplishments, and will report any conditions that have been noted that are inherently or potentially hazardous.
  - (a) In addition to the daily log it is often necessary that a special report covering some hazardous condition be submitted by the Safety Engineer. This report like the daily log is to be written in narrative form and will contain a clear and concise report of the condition that exists and will include the suggestion or recommendation that will reduce or eliminate the hazard.
  - (b) Special check list forms covering various phases of plant operation will be issued to the Safety Engineers from time to time. The Safety Engineer will make the necessary investigations and will make his report according to the instructions that are issued for that particular investigation.
- 7. To write all reports legibly and to make all statements clear and concise.
  - (a) The telegraphic style of writing should be avoided.

(b) All statements should be in the form of complete sentences. (A sentence must express a complete thought.)

(c) In writing a report no detail should be omitted.

#### [fol. 92] Purpose

The purpose of this bulletin is to outline the procedure to be followed by the Safety Inspection Section of the Safety Department for the Prevention and reporting of Accidents.

#### Accident Prevention

Assigned to each manufacturing unit and to each special function of plant operation on each working shift is a Safety Engineer whose duty it is to make inspection in every department of the unit to which he is assigned. These inspections are made of the building structure, the machinery used in the manufacturing process, tools, equipment and materials and the working methods of personnel, in an effort to discover and eliminate any existing or potential hazard that may exist by the development and application of corrective measures.

Special investigations are made by the Safety Engineer in the event of fire or accident, for the purpose of determining the reason for the occurrence of such an event, in order that this information may form the basis for corrective action which will prevent the occurrence of a similar event.

In like manner, especial studies are made of cases of occupational illness in order that the facts obtained may be made applicable to the prevention of the illness of other employees.

#### [fol. 93] The rehabilitation of employees who are partially disabled is another function of the Safety Engineer, when such an employee returns to work the Safety Engineer will contact the Supervisor of the unit to which

the injured person is assigned, and will assist in placing the disabled person in some type of productive operation which will not further the person's disability.

In striving for the prevention of accidents, the Safety Engineers will watch particularly for the following:

1. Failure of employees to wear proper clothing, and failure to use Safety Equipment.
2. Unsafe conduct on the part of the employee.
3. Any unsafe condition that might possibly cause an accident or injury to an employee or damage to material and equipment.

#### Correction of Unsafe Conditions & unsafe acts.

When a Safety Engineer observes an unsafe condition or an unsafe act that presents no immediate danger, he will call it to the attention of the foreman and will enter such infraction or condition on the daily report form IRS 25, which in turn will be submitted to his Supervisor.

#### Use of Form IRS 25

Form IRS 25 will show information pertaining to the unsafe act or unsafe condition, viz.,

- [fol. 94]
1. The number of the department in which the infraction occurred.
  2. Badge number of the person who was performing the unsafe act.
  3. The name and badge number of the foreman who is responsible for the person committing the violation, or who is responsible for the existence of the hazardous condition.
  4. Remarks, relative to the correction of the unsafe act or unsafe condition, such as disciplinary action,

process revision and other information pertinent to the case.

5. A recapitulation of the report of each Safety Engineer will be made and copies will be sent to

(1) Management.

(2) The Building Superintendent of each Operating Unit.

(3) All Safety Engineers.

#### Correction of Hazardous Conditions

When a Safety Engineer discovers what he considers to be the existence of an extremely hazardous condition, he is authorized to take immediate direct action to eliminate the hazard. Any unsafe condition in the restricted areas will also fall under this category. The Safety Engineer will use discretion in the exercise of this authority so that there will be no unnecessary interruption of production. A report [fol. 95] of the circumstances and of the action taken will be promptly made to the foreman or supervisor in charge. Cases of this type will also be reported on Form IRS 25—(Rev. 243).

[fol. 96]

The United States Cartridge Co.  
St. Louis, Missouri

Report of Violations of Safety Regulations

Copies to: John Doe

Date: 3-9-43  
Unit 1

Dept.	Badge	Infraction	Foreman's Name & Badge No.	Remarks
No.	No.			
123	22145	Wearing incomplete equipment at the Baird Barrels. Had only rubber boots, no apron shield or rubber gloves on.	Elkin	Foreman will instruct employee.
155	5639	Work bench between first floor elevator 5-A and pier G-31 too close to elevator.	Smith	Foreman will ask for permission to move the work bench.

Safety Engineer's Signature.....

Form IRS-25 (Rev. 2/43)

[fol. 97]

## Instruction Sheet

## Form IRS-5

Used for:

## I. Accident Investigation

## 1. Lost Time Accidents

The report is to be completed and turned in to the Supervising Safety Engineer as soon as possible.

## 2. All first aid cases that are sent to the hospital.

## 3. Dermatitis cases--A complete investigation is required for each case of Dermatitis.

## 4. A. Information required on accident investigations.

- (a) Name of the injured person.
- (b) Badge number of the injured person.
- (c) Time—The time of the occurrence of the injury.
- (d) Occupation—The occupation of the injured person.
  1. Department number.
  2. Machine number.
- (e) The nature and extent of the injury.
- (f) The treatment of the injury.
- (g) How did the accident occur?
- (h) Had the employee previously been instructed as to safe methods of operation?
- (i) What physical or mental condition of the employee may have contributed to the accident?
- (j) What safeguards were in use at the time the injury occurred?
- (k) What steps have been taken to prevent recurrence of the accident?

## II. Safety Suggestions

### 1. Complete

A report of the completion of the elimination of any hazardous or unsafe condition.

### [fol. 98] 2. Incomplete

A report of condition or hazards that cannot be eliminated within the production unit or within the designated territory to which the Safety Engineer is assigned.

## III. Daily Log

A daily report which will contain a record of all accomplishments and will contain a report of any conditions or practices that have been noted that are inherently or potentially hazardous.

### Form IRS 39

Used for:

- I. A detailed description of all accidents that occur during the hours of operation.
- II. To supply the information that is necessary for compensation and statistical reports.

To fill out the form accurately the following information must appear:

1. Give a simple and exact account of the accident as is received from the injured employee.
2. The nature of the injury.
3. What has been done to prevent the recurrence of such an accident.

After the above information is completed you will find eight schedules which are to be checked according to the information that is shown. You will find attached to this instruction sheet a complete explanation of the schedules four to seven. The rest are self-explanatory. Consult the sample report attached to this instruction sheet.

[fol. 99] The United States Cartridge Co.  
St. Louis, Missouri

Date: 3-15-43

Shift: 1

Safety Inspection Report

Accident Investigation—Lost Time

Report:

Name: Doe, John

Badge: #2000

Occupation: Operator

Time: 10-21-42 at 9:35 P. M.

Location: Bldg. 204, 2nd floor, section D, Gage & Weigh, Machine #13.

Injury: Fracture and laceration of left third finger.

Treatment: Employee reported to the First Aid Station where mercesin and D. A. were applied and was then referred to the Plant Hospital.

Details: Employee was placing cartridges in the feed slide, a cartridge slipped from his grasp and rolled down the top of the feed slide. Mr. Doe reached to catch it and his left third finger was caught between the inserting finger and the indexing dial.

Correction: It is a human trait to try to retrieve something that dropped. This known hazard has been recognized and a suitable guard has been designed. A sample guard has been installed on Gage and Weigh Machine #1 for the past week. Guards for the balance of the machines are now being fabricated in the sheetmetal shop and will be installed as soon as received.

Inspectors Signature.....

Note

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Note

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[fol. 101] *Accident Type*

Type of Accident #4

**Striking Against**

Refers generally to contacts with sharp or rough objects, resulting in cuts, slivers, punctures, etc., due to striking against, kneeling on or slipping on objects.

**Struck By**

Falling, flying, sliding or moving objects

**Caught in, or Between**

**Fall Same Level**

**Fall to Different Level**

**Slip (Not Fall) or Overexertion**

Resulting in strain, hernia, etc.

**Contact With Temperature Extremes**

Resulting in burning, scalding, freezing, heat exhaustion, sunstroke, frostbite, etc.

**Inhalation, Absorption, Ingestion**

Asphyxiation, poisoning, drowning, etc., but excluding contact with temperature extremes

**Contact With Electric Current**

Such as results in electrocution, shock, etc.

**Accident Type, N. e. c.**

Unclassified, insufficient data

[fol. 102] *The Unsafe Mechanical or Physical Conditions*

**Unsafe Condition, #5**

**Improperly Guarded Agencies**

Unguarded

Inadequately guarded

Lack of, or improper, shoring in mining, construction  
excavating, etc.

Not otherwise classified.

### Defects of Agencies

Rough

Slippery

Sharp-edged

Poorly designed

Low material strength

Poorly constructed

Inferior composition

Decayed, aged, worn, frayed, cracked, etc.

N. e. c.—(including hidden defects)

### Hazardous Arrangement, Procedure, Etc., in, on, or, Around the Selected Agency

Unsafely stored or piled tools, materials, etc.

Congestion of working spaces

Inadequate aisle space, exits, etc.

Unsafe planning and/or layout of traffic or process  
operations

Unsafe processes

Overloading

Misaligning

N. E. C.

### Improper Illumination

Insufficient light

Glare

Unsuitable location or arrangement (producing  
shadows or contrasts)

N. E. C.

### Improper Ventilation

Insufficient air changes

Unsuitable capacity, location, or arrangement of sys-  
tem

Impure air source

N. E. C.

[fol. 103] Unsafe Dress or Apparel

- No goggles
- Goggles defective, unsafe, or unsuited for work
- No gloves
- Gloves defective; unsafe, or unsuited for work
- No apron
- Apron defective, unsafe, or unsuited for work
- No shoes
- Shoes defective, unsafe, or unsuited for work
- No respirator
- Respirator defective, unsafe, or unsuited for work
- High heels
- Loose hair
- Loose clothing
- Inadequately clothed, n. e. c.
- N. e. c.

Unsafe Mechanical or Physical Condition, N. e. c.

Unclassified—Insufficient data

No Unsafe Mechanical or Physical Condition

[fol. 104] Unsafe Personal Factor, #6

*Unsafe Personal Factor*

Improper Attitude

- Willful disregard of instruction
- Violent temper
- Absentmindedness
- Willful intent to injure
- Nervous, excitable, etc.
- Failure to understand instructions
- Improper attitude, N. e. c.

Lack of Knowledge or Skill

- Unaware of safe practice
- Unpracticed or unskilled
- Lack of knowledge or skill, N. e. c.

### Bodily Defects

- Defective eyesight
- Defective hearing
- Muscular weakness
- Fatigue
- Existing hernia
- Crippled
- Existing heart or other organic weakness
- Intoxicated
- Bodily defects, N. e. c.

### Unsafe Personal Factors, N. e. c.

Unclassified—Insufficient data.

### No Unsafe Personal Factor

#### [fol. 105] *The Unsafe Act*

##### Unsafe Act, #7

- Operating Without Authority, Failure to Secure or Warn
  - Starting, stopping, using, operating, firing, moving, etc. without authority
  - without giving proper signal
- Failing to lock, block, or secure vehicles, switches, valves, press rams, other tools, materials and equipment against unexpected motion, flow of electric current, steam, etc.
- Failing to shut off equipment not in use.
- Releasing or moving loads, etc., without giving warning.
- Failure to place warning signs, signals, tags, etc.
- Not elsewhere classified.

### Operating or Working at Unsafe Speed

- Running.
- Feeding or supplying too rapidly.
- Driving too rapidly.
- Driving too slowly.
- Throwing material instead of carrying or passing it.
- Jumping from vehicles, platforms, etc.
- N. e. c.

## Making Safety Devices In-Operative

Removing Safety Devices.

Blocking, plugging, tying, etc., of safety devices.

Replacing safety devices with those of improper capacity (high amperage electricity fuses, low capacity safety valves, etc.)

Misadjusting safety devices.

Disconnecting safety devices.

N. e. c.

## Using Unsafe Equipment, Hands Instead of Equipment or Equipment Unsafely

Using defective equipment (mushroom head chisels, etc.)

Unsafe use of equipment (e. g. iron bars for tamping explosives, operation pressure valves at unsafe pressures, etc.)

Using hands instead of hand tools (to feed, adjust, clean, repair, etc.) N. e. c.

Gripping objects insecurely; taking wrong hold of objects.

N. e. c.

## [fol. 106] Unsafe Loading, Placing, Mixing, Combining, etc.

Overloading

Crowding

Lifting or carrying too heavy loads

Arranging or placing objects or materials unsafely (parking, placing, stopping, or leaving vehicles, elevators and conveying apparatus) in unsafe position for loading and unloading)

Injecting, mixing, or combining one substance with another so that explosion, fire or other hazards are created (injecting cold water into hot boilers, pouring water into acid, etc.)

Introducing objects or materials unsafely (portable electric lights inside of boilers or in spaces containing, inflammables or explosives; moving equipment in congested workplaces, smoking where explosives or inflammables are kept, etc.)

### Taking Unsafe Position or Posture

Exposure under suspended loads

Putting body or its parts into shaftways or openings;  
standing too close to openings.

Entering vessel or enclosure when unsafe because of  
temperature, gases, electric, or other exposures.

Lifting with bent back, while in awkward position, etc.

Working on high tension conductors from above in-  
stead of below.

Riding in unsafe position (on platforms, tailboards,  
and running boards of vehicles; tailing on or stealing  
rides; riding on apparatus designed only for  
materials, etc.)

Exposure to falling or sliding objects

N. e. c.

### Working on Moving or Dangerous Equipment

Getting on or off moving equipment (vehicles, con-  
veyors, elevators, animals, etc.)

Cleaning, oiling, adjusting, etc., of moving equipment

Caulking, packing, etc., of equipment under pressure  
(pressure vessels, valves, joints, pipes, fitting, etc.)

Working on electrically charged equipment (motors,  
generators, lines, and other electrical equipment)

Welding, repairing, etc., of equipment containing dan-  
gerous chemical substances.

N. e. c.

### [fol. 107] Distracting, Teasing, Abusing, Startling, Etc.

Calling, talking, or making unnecessary noise

Throwing material

Teasing, abusing, startling, horseplay

Practical joking, etc.

Quarreling

N. e. c.

### Failure to Use Safe Attire or Personal Protective Devices

Failing to wear goggles, gloves, masks, aprons, shoes,  
leggings, etc.

Wearing high heels, loose hair, long sleeves, loose clothing, etc.

N. e. c.

Unsafe Acts, N. e. c.

Unclassified—Insufficient data

No Unsafe Act

[fol. 108] The purpose of this Bulletin is to outline the procedure to be followed by the Safety Department in the event of an explosion, air raid or other disaster.

Turning in  
an Alarm

The discoverer will turn in an alarm in the usual manner for a fire, by pulling a fire alarm box or by telephoning the fire protection unit.

Fire Protection  
Unit

The fire protection unit upon receiving the alarm will take the following action—

1. Proceed immediately to the scene of the disaster and combat any fire that may be present. In the event no fire is apparent they will stand by and make available all rescue equipment.
2. Immediately upon arrival, the fire protection officer in charge will have a member of the unit call Plant Protection headquarters to make sure they have received proper notification.
3. If additional fire fighting equipment is necessary, the fire protection officer in charge will immediately call fire protection headquarters and order additional equipment sent to the scene.
4. If the disaster warrants the use of Safety Engineers as rescue workers and stretcher bearers, the fire protection officer in charge will give this information to the control board at fire protection headquarters and

it immediately will be relayed to the Chief Safety Engineer or, in his absence to the Supervising Safety Engineer on duty.

It will be the responsibility of the fire protection officer in charge at the scene of the disaster to determine [fol. 109] whether or not it is safe for rescue workers to enter the area to evacuate all persons remaining in the disaster area.

### Setting Up Casualty Station

If a casualty station is to be set up near the scene of the disaster, the Medical Department will inform the Protection Department of its location and the Plant Protection control office immediately will notify—

1. The fire protection unit which will dispatch the disaster equipment and Safety Personnel to the designated casualty station. This will consist of—

- A. Disaster equipment.
- B. Ambulances.
- C. Safety Engineers.

### Safety Engineers

The Chief Safety Engineer or, in his absence, the Supervising Safety Engineer on duty, upon being notified of the location of the disaster and the need of the assistance of Safety Engineers will immediately call Plant Protection headquarters and request that the disaster signal be placed on the aut-o-call. This signal will be giving four (4) long intermittent signals on the aut-o-call bell followed by four (4) short signals. Upon hearing the disaster signal each Safety Engineer will immediately call the Supervising Safety Engineers office, (Station 763) or (Station 792), and will be dispatched to the scene of the disaster, where they will be assigned duties. These duties will be as follows:

[fol. 110] Duties of the  
Safety Engineer

1. Act as stretcher bearers and rescue workers.
2. Help drivers load the ambulances with stretchers.
3. Assist nurses and clerical workers in establishing the identification of injured persons.
4. Cooperate with guards in searching debris and ruins for casualties and removing them to the nearest possible point of safety.

Identification of  
the Injured

The Safety Department will aid the Medical Department in establishing the identity of the injured. Such information as is gathered in the casualty station will be entered on a serially numbered "Identification of Injured Persons" (Form IRM-18) Prepared in triplicate for each injured person. The original and duplicate copies of IRM-18 will show:

1. Date and time.
2. Employees' name and badge number.
3. The destination to which the person is to be taken.
4. The type of emergency treatment given.

The triplicate copy will be in the form of a tag to be attached to the injured person, and will show the same information. After preparation Form IRM-18 will be distributed as follows:

[fol. 111] Original—Retained by Medical Department.

Duplicate—Forwarded to Plant Protection Headquarters.

TriPLICATE—Attached to the person of the injured individual.

Individuals who cannot be identified and who are to be taken to the plant hospital or outside hospital will be accompanied by a Safety Engineer or a person designated by the Safety Department.

## Calling in Outside Facilities.

If the disaster is serious enough to warrant calling in outside facilities, the Chief Safety Engineer, the Director of the Medical Department or the Chief of Plant Protection, or their authorized representatives will issue the order to call in outside facilities. This order must be given to Plant Protection headquarters by one of the above mentioned persons who will identify himself by giving his name, title and photo-identification badge number.

## Release of Information.

All incoming calls from news gathering agencies, will be referred to the Public Relations office, and all information released to the public will be through the Public Relations Department.

## Notification to Family or Relatives.

It will be the responsibility of the Safety Department to report the following to the Public Relations Department:

1. Details concerning the disaster.
2. Casualties as soon as the extent of the injuries are known.
3. A copy of such reports will be sent to the Plant Protection Department.

## [fol. 112] Casualty Stations Plant No. 3

If the disaster is in Building 102, the injured persons will be moved to the cafeteria on the first floor of Building 103.

With disaster in Building 111 or 110, the injured persons will be removed to the canteen on the first floor of Building 103.

If disaster occurs in Building 101, the injured persons will be removed to Building 107, squad room.

If a disaster occurs in Building 107, the injured will be removed to the canteen in Building 101.

If a disaster occurs in plant number 1, restricted area including Building 117, all injured will be removed to canteen on the first floor of Building 105.

If the disaster is in Building 103, injured persons will be removed to the cafeteria on the first floor of Building 102.

If the disaster is in Building 105, injured persons will be removed to the cafeteria on the first floor of Building 103.

If the disaster occurs in Building 104, the injured persons will be moved to the canteen on the first floor of Building 102.

If the disaster is in Building 102, the injured persons will be moved to the cafeteria on the first floor of Building 103.

If the disaster is in Building 111 or 110, the injured persons will be removed to the canteen on the first floor of Building 103.

If disaster occurs in Building 101, the injured persons will be removed to Building 107, squad room.

If disaster occurs in Building 107, the injured will be removed to the canteen in Building 101.

#### [fol. 113] Casualty Stations Plant No. 2.

If a disaster occurs in the restricted area of plant number 2, and the viaduct is intact, the injured will be taken to the cafeteria on the first floor of Building 203. If the viaduct is not passable the injured will be taken out of the southeast gate of the restricted area to the squad room in Building 107 and use the cafeteria on the first floor of Building 102 for the overflow.

If the disaster occurs in Building 202, the injured will be removed to the cafeteria on the first floor of Building 203.

If the disaster occurs in Building 203, the injured will be removed to the cafeteria in Building 204.

If the disaster occurs in Building 204, the injured will be removed to the class rooms in Building 222B.

If the disaster occurs in Building 205, the injured will be taken to the class rooms in Building 222B.

If the disaster occurs in Building 211, the injured will be taken to the class rooms in Building 222B.

If the disaster occurs in Building 222B, the injured will be removed to the cafeteria in Building 204.

#### Form Discussed

The following form was discussed in this procedure:

Form IRM-18 "Identification of Injured Person"

Note

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## [fol. 115] Non-Productive Departments

## I. Manufacturing Administrative—G. A. Gilbertson

- 300 Manufacturing Administrative
- 302 Bldg. 102
- 303 Bldg. 103
- 304 Bldg. 104
- 305 Bldg. 105
- 306 Chemical Units, Plant I
- 312 Bldg. 202
- 313 Bldg. 203
- 314 Bldg. 204
- 315 Bldg. 205
- 316 Chemical Units, Plant II

## II. Inspection—M. Hurley

- 320 Administrative Chief Inspector, his staff, men and clerical help
- 321 Chemical Units Plant I including lead shop
- 322 Bldg. 102
- 323 Bldg. 103
- 324 Bldg. 104
- 325 Bldg. 105
- 326 Metallurgy
- 327 Ballistics

## III. Engineering Department—V. Haag

- 340 Engineering Administrative
- 342 Mechanical Engineering
- 343 Experimental Engineering
- 344 Methods Engineering
- 345 Tool Inspection

## IV. Tool and Gage Dept.—A. C. Krus

- 350 Tool Production (Supt., Gen. and clerical help in addition to tool mfg.)
- 351 Gage Shop
- 352 Mechanical Maintenance
- 353 Heat Treating

V. Plant Maintenance Engineering—J. C. Stewart

- 359 Plant Maint. Engr. Adm. Plant Engr., his staff and clerical help
- 360 Electrical
- 361 Carpenters and Painters
- 362 Plumbers and Steamfitters
- 363 Power Plant
- 364 Sanitary
- 365 Special Equipment Serv.
- 367 Bldg. and Grounds Maintenance
- 369 Sheet Metal
- 371 Powder Farm Maintenance

VI. Production Control—A. E. Allen

- 380 Production Control Administrative Manager, Asst's Supt. of Stores Staff men and clerical help
- 381 Statistics and Reports
- 383 Material Handling and Brass reclamation
- 384 Garage and Transportation
- 385 Stores—General
- 386 Shipping and Traffic
- 387 Receiving
- 388 Explosives and Power Farm
- 389 General Salvage—Burning Grounds
- 390 Production Scheduling
- 391 Tool and Machine Parts Control
- 392 Steel Control
- 393 Tool and Gage Shop Scheduling

VII. General—B. E. Bassett

- 400 General Administrative
- 402 Legal
- 403 Purchasing
- 404 Expediting
- 405 Office Service
- 407 Tool Coordinating Committee
- 408 Philadelphia Office
- 470 Plant Protection

### VIII. Industrial Relations—O. W. Roberts.

- 419 Industrial Relations Administrative
- 420 Employment
- 421 Personnel
- 422 Medical
- 423 Public Relations
- 434 Safety
- 435 Training School
- 480 Ordnance Department

### IX. Comptrollers—H. J. Meyn

- 440 Comptrollers Administrative Comptrollers  
Mgrs., General and Factory Accts., their staff  
men and clerical help
- 441 Stationery Stores
- 442 Auditing and Procedure
- [fol. 116] 443 General Accounting
- 444 Addressograph
- 445 Factory Accounting
- 446 Payroll
- 447 Tabulating
- 448 Timekeeper
- 449 Property Records
- 450 Disbursements
- 451 Reimbursements

The Non-Productive Departmental Code has been changed to numerical order, so as to expedite its use by the Safety Engineers. It is not intended to change the flow of authority which the above arrangement does not mention.

## Departmental Code

	.30 Cal. Unit	.30 Cal. Unit	.50 Cal. Unit	.50 Cal. Unit
Case Draw .....	120	130	140	150
Bump, Pocket & Heading	121	131	141	151
Case Finishing .....	122	132	142	152
Anneal, Pickle & Wash..	123	133	143	153
Jacket Draw, Trim.....	124	134	144	154
Bullet Assembly .....	125	135	145	155
Primer Insert .....	126	136	146	156
Cartridge Loading.....	127	137	147	157
Gage and Weigh.....	128	138	148	158
Packing .....	129	139	149	159
Lead Shop .....		180		
Primer Mix .30 & .50 Cal.		181		
Cup and Anvil.....		182		
Primer Mfg. A.....		183		
Primer Mfg. B.....		184		
Tracer Charge .30 Cal...		185		
Tracer Charge .50 Cal...		186		

The Department Code numbers of Plant #2 are identical with those of Plant #1, except for the first number of the series which is prefixed with a two instead of a one.

AIR DEPARTMENT  
Office of the Chief of Ordnance  
Washington, D. C.

September 4, 1942

SUBJECT: Injury Incurred by Female Machine Operator.

TU: Safety Officer,  
St. Louis Core Plant,  
St. Louis, Missouri

1. Attention is directed to the following report of a recent serious accident:

A female milling machine operator with three months experience was being instructed in the operation of a barrel chambering machine by another employee who was operating the machine. The injured employee was leaning over the barrel which was being chambered, to stamp barrels in a rack just beyond the turning barrel, when a few strands of her hair as well as the hair net she was wearing became entangled in the turning barrel. Her hair was torn away from her head.



2. Investigation disclosed the following factors:

- a. The machine had not been stopped before stamping the barrels.
- b. The injured employee was not wearing her hair net properly.
- c. The employee was inexperienced.

3. Safe practice requires that:

- a. Barrels shall not be stamped or checked for stamping until the machine is stopped.
- b. Female employees shall be instructed to wear a head covering which will cover the head completely to avoid any loose strands of hair coming in contact with a moving machine.

4. All establishments employing female machine operators are directed to observe the above safety precautions.

By order of the Chief of Ordnance:

A. B. Johnson  
Col., Ord. Dent.  
Assistant:

[fol. 118]

Date: October 16, 1942

To: Messrs: G. A. Gilbertson  
V. Haag; M. Hurley,  
J. C. Stewart,  
A. E. Allen

From: Mr. D. C. Storms

It is the responsibility of the Supervisory Personnel to enforce all safety rules of this Company whether they apply to flywheels, mechanical guards, goggles, hair nets, uniforms, safety shoes, conductive shoes, etc. I ask that you so instruct all general foremen and foremen accordingly.

May I further emphasize that Supervisory Personnel are themselves to comply with all of the Safety rules. It is to them that the other employees must look for an example. Any accident prevention program to be successful must have the cooperation of Supervision.

D. C. STORMS.

JCS:mw;mw

[fol. 119]

## Safety Equipment List

August 10, 1942

## Male and Female

It will be required that all persons entering production areas shall wear goggles at all times, excepting in canteens, locker room, and offices.

Department		Safety Goggles (Rx Goggles to be furnished by employee & plain goggles will be supplied by the Company)
	Coverall	
	(E—Employee Furnish)      (C—Company Furnish)	Type of Shoe (S—Safety) (C—Conductive)
Lead Shop	Yes C.....	Yes S..... Yes
Chemical Area	Yes C.....	Yes C..... Yes
Male	Opt. E.....	Yes S..... Yes
Receiving Stores		
Female	Yes E.....	Yes S..... Yes
Male	Opt. E.....	Yes S..... Yes
Shipping		
Female	Yes E.....	Yes S..... Yes
Male	Opt. E.....	Yes S..... Yes
Metallurgists		
Female	Yes E.....	Yes S..... Yes
Cases		
Male	Yes C.....	Yes S..... Yes
Cup		
Female	Yes C.....	Yes S..... Yes
Male	Opt. E.....	Yes S..... Yes
Draws		
Female	Yes E.....	Yes S..... Yes
Male	Opt. E.....	Yes S..... Yes
Bump; Pocket & Head		
Female	Yes E.....	Yes S..... Yes
Male	Opt. E.....	Yes S..... Yes

	Coverall (E—Employee Furnish)	Type of Shoe (C—Company Furnish)	Safety Goggles (Rx Goggles to be furnished by employee & plain goggles will be supplied by the (C—Conductive) Company)
Department			
Trim			
Female .....	Yes E.....	Sensible*... Yes	
Male .....	Opt. E.....	Yes S..... Yes	
Head Turn			
Female .....	Yes E.....	Sensible*... Yes	
[fol. 120] Male .....	Opt. E.....	Yes S..... Yes	
Taper & Plug			
Female .....	Yes E.....	Sensible*... Yes	
Male .....	Opt. E.....	Yes S..... Yes	
Finish, Trim			
Female .....	Yes E.....	Sensible*... Yes	
Male .....	Yes C.....	Yes S..... Yes	
Wash and Anneal			
Female .....	Yes C.....	Yes S..... Yes	
Male .....	Opt. E.....	Yes S..... Special	
Body, Mouth & Neck Anneal			
Female .....	Yes E.....	Sensible*... Special	
Male .....	Yes C.....	Yes S..... & Boots.... Yes	
Pickling			
Female .....	Yes C.....	Yes S..... Yes	
Male .....	Opt. E.....	Yes S..... Yes	
Sort After Trim			
Female .....	Yes E.....	Sensible*... Yes	
Male .....	Opt. E.....	Yes S..... Yes	
Head Gage			
Female .....	Yes E.....	Sensible*... Yes	
Male .....	Opt. E.....	Yes S..... Yes	
Visual Inspection			
Female .....	Yes E.....	Sensible*... Yes	
Bullet			
Male .....	Opt. E.....	Yes S..... Yes	

**Safety Goggles**  
 (Rx Goggles to  
 be furnished  
 by employee  
 & plain  
 goggles will  
 be supplied  
 by the  
 Company)

**Coverall**  
 (E—Employee  
 Furnish)  
 (C—Company  
 Furnish)

Type of Shoe  
 (S—Safety)

be supplied  
 by the

(C—Conductive) Company)

**Department**

**All Draws**

Female .....	Yes E.....	Yes S.....	Yes
Male .....	Opt. E.....	Yes S.....	Yes

**Trim**

Female .....	Yes E.....	Sensible*... Yes
Male .....	Opt. E.....	Yes S..... Yes

**Assembly**

Female .....	Yes E.....	Sensible*... Yes
Male .....	Opt. E.....	Yes S..... Yes

**Polish and Inspect**

Female .....	Yes E.....	Sensible*... Yes
Male .....	Opt. E.....	Yes S..... Yes

**Cannelure**

Female .....	Yes E.....	Sensible*... Yes
[fol. 121] Male .....	Opt. E.....	Yes S..... Yes

**Visual Inspection**

Female .....	Yes E.....	Sensible*... Yes
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**Load and Primer Insert**

Yes C.....	Yes C.....	Yes
------------	------------	-----

**Inspection**

Yes C.....	Yes C.....	Yes
------------	------------	-----

**Canning and Magazine**

Yes C.....	Yes C.....	Yes
------------	------------	-----

Male .....	Opt. E.....	Yes S..... Yes
------------	-------------	----------------

**Gage and Weigh**

Female .....	Yes E.....	Sensible*... Yes
--------------	------------	------------------

Male .....	Opt. E.....	Yes S..... Yes
------------	-------------	----------------

**Inspection**

Female .....	Yes E.....	Sensible*... Yes
--------------	------------	------------------

Male .....	Opt. E.....	Yes S..... Yes
------------	-------------	----------------

**Soldering and Test**

Female .....	Yes E.....	Yes S..... Yes
--------------	------------	----------------

Male .....	Opt. E.....	Yes S..... Yes
------------	-------------	----------------

	Coverall (E—Employee Furnish)	Type of Shoe (C—Company Furnish) (S—Safety) (C—Conductive)	Safety Goggles (Rx Goggles to be furnished by employee & plain goggles will be supplied by the Company)
Department			
Packing			
Female .....	Yes E.....	Yes S.....	Yes
Repair			
Male .....	Opt. E.....	Yes S.....	Yes
Boiler House .....	Opt. E.....	Yes S.....	Yes
Battery Chargers .....	Opt. E.....	Yes S.....	Yes
Drop Test .....	Yes C.....	Yes C.....	Yes
Powder Handling Manufacturing .....	Yes C.....	Yes C.....	Yes
Powder Handling—			
Non-Mfg. .....	Opt. E.....	Yes C.....	Yes
Garage (Mechanics)	Male Yes C.....	Yes S.....	Yes
Tunnels	Male.....	Opt. E.....	Yes S.....
Tool and Gage—All Operations			
Male .....	Opt. E.....	Yes S.....	Yes
Female .....	Yes E.....	Yes S.....	Yes
Male .....	Opt. E.....	Yes C.....	Yes
Proof House			
Female .....	Yes E.....	Yes C.....	Yes
Male .....	Yes E.....	Yes S.....	Yes
Tool Crib			
Female .....	Yes E.....	Yes S.....	Yes
Scrap Baler	Male.....	Opt. E.....	Yes S.....
[fol. 122] Hopper Men	... Opt. E.....	Yes S.....	Yes
Powder Movemen (Restricted)			
Male .....	Yes C.....	Yes C.....	Yes
Machine Shop	Male.....	Opt. E.....	Yes S.....

Department	Overall (E—Employee Furnish) (C—Company Furnish)	Type of Shoe (S—Safety) (C—Conductive)	Safety Goggles (Rx Goggles to be furnished by employee & plain goggles will be supplied by the Company)
<i>Heat Treat</i> Male.....	Opt. E.....	Yes S.....	Yes
<i>Material Handlers</i> Male..	Opt. E.....	Yes S.....	Yes
<i>Utility Men (Steel Ware- house)</i> .....	Yes C.....	Yes S.....	Yes
<i>Acid Handlers</i> Male.....	Yes C.....	Yes S.....	Yes
<i>Timekeepers</i> .....	Opt. E.....	Yes S.....	Yes
<i>Timekeepers (Restricted)</i> .....	Opt. E.....	Yes C.....	Yes

\*Sensible—A sensible shoe for the female employee is to embody the following characteristics: A good sole to consist of preferably a moderate weight leather, and must be kept in good repair. The heel is to be equivalent to that on a nurse's oxford—of either rubber or leather. Under no condition will rubber or crepe rubber sole shoes, high heel, toeless or heelless shoes of any description be permitted in the Production Area.

*Hair Nets* All women working in the production areas will be required to wear hair nets. They may be purchased in the Safety Stores.

*Uniforms* The management requests that all employees in the production areas wear a uniform of a type that has been approved, which consists of a suntan coverall for the women, and a suntan coverall, suntan pants and shirt for the men. These uniforms are available and may be purchased on payroll deduction through the Company. They may also be furnished by the employees themselves from

outside sources, providing they meet with the specifications of the uniforms made available by the Company.

*Maintenance* All maintenance employees will be governed by the foregoing job specifications, except electricians and welders, who shall wear insulated safety shoes instead of powder shoes.

*Jewelry* Under no condition will the wearing of jewelry such as rings, bracelets, watches, necklaces, etc., be permitted during working hours.

[fol. 123] Approved:

CLYDE E. STRICKLAND,  
Director of Safety.

D. C. STORMS,  
General Superintendent.

G. A. GILBERTSON,  
Superintendent of Plant Manufacturing.

A. E. ALLEN,  
Production Control Manager.

M. M. HURLEY,  
Chief Inspector.

A. C. KRUS,  
Superintendent, Tool & Gage Department.

J. C. STEWART,  
Superintendent of Plant Engineering.

F. LINCOLN LUKE,  
Chief of Plant Protection.

HENRY J. MEYN,  
Comptroller.

DR. R. C. SUNDEMAN,  
Medical Director.

(End of Plaintiffs' Exhibit F)

[fol. 124] Mr. Bond: The duties of the safety engineers would be as follows:

"1. To see that the proper safety equipment is provided and worn by the employees at all times. (a) Violations of the rules pertaining to use of personal protective equipment such as the failure to wear glasses; the failure to wear the approved types of hair covering; the failure to wear safety shoes, the wearing of jewelry, the operation of machinery that is defective or unguarded or inadequately guarded, will be reported to the supervisory safety engineers by the engineer in each unit on each shift. Procedure to be followed in making the report and the corrective action to be taken on these infractions of the rules is as follows: (1) Upon noting infractions of safety rules the safety engineer will procure the badge number and the department number of the person or persons who are violating the safety rules. (2) He will then report the badge number and the nature of the violation to the offender's foreman or supervisor. (3) At the end of each working shift each safety engineer will submit a report to his supervisor in regard to these violations.

"This report will be made on the safety inspection report Form IRS-25, and will embody the following information (1) The badge number of the person who violated the safety rule. (2) the number of the [fol. 125] department in which the violator is employed. (3) the nature of the violation. (4) The name and badge number of the foreman or supervisor of the department in which the violator is employed. (5) The reaction of the supervisor upon receiving the reports of these violations will be noted by the safety engineer, and he will incorporate in his report his comments on the supervisor's attitude. (6) The safety engineer will not attempt any correction of these violations by contacting the individuals who are guilty of these violations. In all cases he will contact the supervisors of the individual concerned and will leave corrective action to the supervisor. This report will state the working shift during which these incidents occurred.

The shift check in the upper right-hand corner will not be used in making this report. Instead, each safety engineer will write the date and the time of his working shift at the top of the report page in this manner:

"Should the violations exist during the working shift a report of such condition will be made in the manner as outlined above. Consult sample report which is included in this Manual. An exception to this rule will be made when an employee is engaged in some operation whereby death or serious injury may result. Should this condition exist the safety engineer will stop the hazardous operation and will immediately seek the supervisor of the person who was performing such act and will report the incident [fol. 126] to him and will explain in detail why he caused such operation to be stopped.

"2. To observe and correct unsafe methods and conditions, and observe and correct any unsanitary or unhealthful condition. These observations will be incorporated in the daily log. Items of major importance will be covered by a separate report. The same method will be followed as outlined in Item one."

Q. (Mr. Bond) Now then, I am asking you to tell us from your knowledge out there as a member of that safety department for nearly four years if you recognize those as the instructions that went to all safety engineers?

Mr. McRoberts: Object unless the witness knows what instructions went to all safety engineers and will so testify.

Mr. Bond: I am asking him if he knows, Your Honor.

The Court: He may state how he knows.

A. As I said before, I can only speak with reference to the group of my own shift.

The Court: Thirty or thirty-five in your shift.

Q. (Mr. Bond) Were those the general instructions under which you operated? A. They were.

Q. Did you ever hear of any different instructions to any other safety engineer?

Mr. McRoberts: Just a moment. Object to that, Your [fol. 127] Honor, please, what he may have heard with respect to other instructions to other safety engineers. The fact he didn't hear of it would prove nothing.

The Court: Sustained.

Q. Now, in performing those duties tell us whether or not you came in contact with other safety engineers, and if so, how, and how extensive?

A. Well I, of course, being assigned to cover sixteen buildings which were—which these sixteen buildings, two of which were part of the large production building, Judge, these large production buildings, a safety inspector was assigned to each one of the large production buildings. And, of course, to get the first aid reports on accidents which occurred in the sixteen buildings that I was assigned to cover, I had to go into the First Aid Station in the main production building, and it was very unusual if I didn't bump into the safety inspectors who were assigned to the large production unit.

Q. In that way would you see them in the performance of their duties? A. I would.

Q. Tell us whether or not the duties they performed were the same as yours?

Mr. McRoberts: Object. That calls for an opinion and conclusion of the witness.

The Court: Sustained.

[fol. 128] Q. State whether or not you saw them performing duties of the kind that you have here outlined?

Mr. McRoberts: Same objection, if Your Honor please.

The Court: Objection sustained.

Q. Now this safety department that we are talking about, tell us whether or not it was plant—was that a plantwide set up? A. Yes, sir.

Q. The safety department of the United States Cartridge Company was plantwide in its functions, is that right?

A. That is right.

Q. And you have told us who the personnel consisted of, I believe the directors and assistants and inspectors and engineers? A. Yes, sir.

Q. And tell us how those engineers were assigned, to what unit and what different plant functions were they assigned?

A. Well, there were, of course, eight men to a shift. They were assigned to the main production unit. One man to the Primer Buildings, one man to the large storage magazine, two men, I believe, to each of the restricted area sections, one man to tunnels, two men to sanitation, and of course one was assigned to the farm where the large concentration was stored, one man to transportation, one [fol. 129]-man to burning ground, and that is all.

Q. Now in reference to reports that these men made, tell us whether or not you were all given the same forms.

Mr. McRoberts: Object unless you know what every man was given.

Mr. Bond: I think a man who is part of a department and knows what kind of documents are issued out for certain purposes, he doesn't have to see it actually handed to every man in the department in order to say "this is the form used in that department for that purpose." That is all I am asking him.

The Court: He may answer.

A. Well, with respect to the forms I can only talk in reference to men with whom I associated on my shift. The forms that were used were all stored in our building and we all drew our supplies from this same source.

Q. Whom do you mean by "all"?

A. All of the men on my shift.

Q. Where would the men on the other shifts get their forms?

Mr. McRoberts: If you know.

A. I can only presume that it is the same source.

Mr. McRoberts: I move the presumption be stricken out, Your Honor.

The Court: Sustained.

The Court: Announce a 5-minute recess.

[fol. 130] Thereupon, at 11:41 A. M., July 8, 1946, a brief recess was taken. The proceedings then were resumed as follows:

Q. (Mr. Bond) Mr. Harris, tell me did you work in any other departments besides this primer and loading that you have been talking about? A. Yes, sir, I did.

Q. Which other ones? Tell us.

A. Well, Sanitation, temporarily, and main production building quite a long time, the large storage magazines for a short time as a roving inspector. In fact, I believe I covered almost all the various units of the safety inspector work with the possible exception of the powder farm and burning ground and restricted area.

Q. Powder what? A. Powder farm.

Q. What was the other one?

A. Burning ground and restricted area.

Q. Except for those three, then, you worked as an inspector in all units of the plant?

A. I did, I served on occasions temporarily for one shift, worked the restricted area.

Q. This whole description that you have given us of your duties, does that apply to other units as well as to the one you are talking about? A. Yes, sir.

[fol. 131] Q. And were the other safety inspectors with you on shifts in these other buildings.

A. I don't understand the question.

Q. Now, there was only one inspector to a shift?

A. That is right.

Mr. Bond: I will withdraw the question.

Q. Now, Mr. Harris, I want to question you now about two sets of computations that you handled. I am going to later have these—wait. I show you a group of papers and ask you what they are?

A. These are summaries that were prepared as I understand it by the United States Cartridge Company and submitted to you in response to your request.

Mr. Bond: Their genuineness is admitted, Your Honor.

Mr. McRoberts: If your Honor please, I think the documents speak for themselves as to what they show.

Q. I want to direct your attention to certain features. And I see no harm in his stating certain things he prepared to be shown under certain—.

Mr. McRoberts: The witness has been given papers with respect to 59 separate employees. There is one that refers to the witness and his hours, and I think his testimony should be limited to those things.

Mr. Bond: The fact is, Your Honor, these are their figures, their genuineness has been admitted, they are [fol. 132] verified truths for the purpose of this record. Now, what I am going to prove by this witness is that using these as a basis he made some mathematical computations which I will later come to.

Mr. McRoberts: I have no objection to that.

Q. Now then, calling your attention to the headings, the gross wages, total actual hours and pay periods. The first column is pay periods. Those are a series of weeks, are they not? A. They are.

Q. And the total actual hours, purporting to be figures showing hours worked? Isn't that it? A. Yes, sir.

Mr. McRoberts: Just a moment. This witness doesn't know what those hours are. All this witness knows is what is stated on the top of the column.

The Court: Objection sustained.

Mr. Bond: It is admitted what they show.

Mr. McRoberts: That is not admitted, that is the very thing that is in issue in this case.

The Court: It is an issue in this case, I understand.

Mr. Bond: Well, it is admitted, as I understand it, that the hours are the actual hours of each employee as they appear from the pay roll records?

Mr. McRoberts: I don't admit those are the hours they worked or the hours for which they are entitled to compensation. [fol. 133]

Mr. Bond: You don't admit they are entitled to compensation, but you admit those are the hours worked.

Mr. McRoberts: I don't admit it. I prefer to make my own admissions.

Mr. Bond: In the first place, I can state because I have correspondence in my file that I can back it up with, that at my request Mr. McRoberts handed me those computations. Now then, I asked you for an admission under Rule 36. "Plaintiffs state that at their request in order to avoid the production and introducing in evidence of a great quantity of time-cards and other pay roll records, defendant has heretofore prepared and delivered to the plaintiffs' attorney a voluminous set of computations showing in substance the name, badge number, dates of commencement and termination of employment, pay roll periods, occupational code, total actual hours, rate, gross wages, certain deductions and net amount paid; computed as to each of the 59 plaintiffs herein and entitled Safety Inspectors' Earning Summary. Now, therefore, in order that there may be no question of the plaintiffs' right to offer these computations in evidence and use them as admissions of the facts and figures therein recited, plaintiffs under the provisions of Rule 36 of the new Federal Rules request of defendant an admission of the genuineness thereof and an admission that the said computations as prepared by defendant as aforesaid are correct and that they truthfully reflect what is contained in the defendant's records."

Now, then, there was an answer to that. Have you got it there, answer to my request of admissions? No, sir, that was an additional request.

"With respect to the second request for an admission, defendant states that the defendant admits the genuineness of the set of computations referred to in said request, admits that the said computations are correct and that they truthfully reflect what is contained in the defendant's record, except that defendant states that the said computations do not reflect a deduction which should be made for the one-half hour lunch period each day when each of the employees covered by said computations were off duty. And to that extent the computations include one-half

hour's time each day for each employee when each such employee did not work and such time should be deducted in computing the hours worked in excess of forty hours. In computing the hours worked in excess all computations showing time beyond the regular employee shift were computed on the basis of full six-minute periods or multiples thereof, and minutes less than six were disregarded."

Now then, except for the half hour for lunch, which I contend they are employed for and he says they are not. We did this in order to avoid producing ten thousand time-cards into this court-room. He admits that is a correct [fol. 135] reflection of the hours worked by these employees, shown on the time-card, and gross pay they received and the period over which they worked. And why can't we assume those facts in the questions put to the witness?

Mr. McRoberts: That is the very thing we attempted to clear. These computations correctly show the figures are extended out on the time-card. They do not correctly show the method, they have not correctly stated the method which was used in making these extensions, and that is the matter which we attempted to correct by the answer to the interrogatory filed.

Mr. Bond: That is an entirely different matter. I am not talking about that now at all. That is an extra half hour which I have handled separately in my computations. What I am talking about now is the total actual hours reported. I say I certainly, in view of the fact that he gave them to me to avoid the production of the records, the fact that at my request he admits they correctly reflect the records as to the hours worked and time paid, and period worked, I have a right to assume these facts in evidence at the trial. Now, what he is talking about is, after he gave me those I asked him if they included an additional half hour before shift. He said first in his answer that he gave me that they didn't include that half hour, that the half hour was extra. And so in making my computations I have treated a half hour in a separate column but at the same time, in order not to confuse it, I have

[fol. 136] made the computations on the actual figures he reported. He admits they worked that much, the only question is whether it includes or does not include another half hour.

Mr. McRoberts: I do not admit the witnesses worked the number of hours shown on the computations. That is just the point in issue.

Mr. Bond: I disagree with him and I say that the record sustains me and not him, that the whole idea was to have admitted here the hours these men worked, and he has admitted that Mr. R. M. Powell—which one have you, Your Honor?

The Court: A. C. Kropp.

Mr. Bond: He admitted Mr. A. C. Kropp having this badge number started to work on that day and ended on that. That for this period ending he had this occupational code, whatever he was down here, that the total actual hourly work was thirty-six, that is hourly rate—that was while he was on hourly rate, and his gross wages were 31, that these deductions were made and the net amount paid. Now I do not know how you can get away from that.

Mr. McRoberts: Perhaps I can explain.

Mr. Bond: That has nothing to do with that, that is merely confusing Your Honor. In that very letter he mailed to Your Honor he said, "I do not deny the figures are correct as to the hours worked" but he discusses with me whether that includes an extra half hour that I say it [fol. 137] does. Now in these computations which I have prepared here I have shown that half hour separately and so if you find we are not entitled to it you can disagree with the column; but I have based that entirely on his figures as shown in defendant's summary. And I do not see how he can say now, in view of the fact that he has given me the figures, admitted they are genuine, that the man did not work, that he didn't get paid that much.

Mr. McRoberts: I think I can show you just what the difficulty is. Here is a double time-card. Under the column where he punches the clock in and punches out,

no employee gets in and out on the exact hour, unless the shift is changed, he naturally will punch the clock anywhere from two minutes to a half hour before the start. Sometimes he will punch it after the shift ends. Here is a man hit it at 12:01 instead of 12:02. He was there ready to go. But when you go to extending time shown out here in these pencil figures, certain rules or principles were followed by the Pay Roll Department. They would exclude certain minutes and include certain other time.

The Court: Some small number they ignored?

Mr. McRoberts: Yes, sir, part of the time this half-hour lunch period is omitted and in the figures for the rest of the time the half-hour lunch time is included. In other words, the total extended there includes the half-hour lunch period. Now the figures which Mr. Harris has before him and which Judge Bond is talking about here [fol. 138] are merely reproductions of this pencil figure which adds up to so many hours shown on the time-card. We admit those are the number of hours shown by our record.

The Court: The time the men checked in and out?

Mr. McRoberts: According to the different form that was used. But those figures do not reflect necessarily the hours which the man worked and for which he is entitled to pay. And those are the things which require, I believe, a recomputation according to whatever is the proper principle to be applied. And I think possibly it is a matter that can wait until the case is disposed of. If Your Honor agrees with us on the principle no overtime is due, then the computation is immaterial. If the computations are needed then you can fix the new principle upon which the computations can be made and new ones can be furnished according to the actual facts.

Mr. Bond: Meantime, I am making my computations on the actual hours that appear on the time-card and that they report as shown on the time-card.

Q. (Mr. Bond) Now then, these computations here, I believe I was asking you if I had handed you this sum-

mary for the purpose of having some further computations made for them? A. That is right.

Q. Now then, did you make some computations from these salaries, and what computations did you make?

A. I made computations from these salaries, with the [fol. 139] assistance of some of the other men, based them, of course, on a 40-hour week. And they claim, for instance, if a man worked 52-1/10 hours in a week, we took his monthly rate and divided by 40 and determined what the hourly rate was. All hours in excess of 52-1/10 we [scandalized] at the rate of time and a half.

Q. Did you do that as to each claim? A. We did.

Q. Are those your computations? A. They are.

Mr. Bond: I now offer in evidence defendant's summaries and ask that they be marked "Plaintiffs' Exhibits A-1 to A-59." I have numbered them in pencil that way. I think it can be done later because I have numbered them in pencil 1 to 59. And I have also offered in evidence the computations made therefrom, and I will ask they be numbered B-1 to B-59. The copy I am giving you is exactly as I have introduced excepting it hasn't got the adding machine tape on it. I don't have copies of them. They are numbered just as your summaries are numbered.

Note

Blank Pages at this Point

[fol. 520] Mr. McRoberts: Your Honor please, I would like an opportunity to examine, if I may, before being required to make an objection. I do object at this time for the reasons heretofore stated that the papers Exhibit A-1 to A-59 do not show and there has been no proper evidence [fol. 521] offered to show that the hours actually worked by the employees are reflected in that exhibit. If that is true, then all of these other computations are erroneous. But I would like an opportunity to examine these a little more carefully and, if necessary, make a further objection.

Mr. Bond: There will be no objection to that.

Q. (Mr. Bond) I might ask you to state in detail just how the computations were made and what they purport to show.

A. Well, they carry similar headings in many instances to those in defendant's summary. The first column shows the pay period ending. In column 2a are the number of hours as shown on the defendant's summary.

Mr. McRoberts: That is Exhibit A you are referring to, isn't it?

Mr. Bond: Use the "Exhibit A" when you refer to defendant's summary.

A: [Columb] 2b is the hours as per the time-card, plus an additional 3 hours.

Q. Now then, what is that additional three hours?

A. Well, on their figures they have failed to credit us for an additional half hour each day we were required to be there and be on duty.

Mr. McRoberts: Just a minute. You are talking about yourself and your shift now; I take it?

A. No, I am talking about them all now.

[fol. 522] Mr. McRoberts: Do you know what all of them were required to do, of your own personal knowledge?

A. I do, yes, sir.

Mr. McRoberts: What is the source of your knowledge?

A. The source of the knowledge is that I in the three or four years that I was in that department, I shifted around and worked with practically every man in the department on the same shift. And I know personally that we were not only verbally told but were told by bulletin that we

were required to be there one-half hour before the shift to change our clothes and to be on the job and confer with the engineer we relieved before the shift changed. We were on duty eight and a half hours a day, every minute of the day.

Mr. McRoberts: If Your Honor please, to the extent the answer is based on a bulletin, it appears that this testimony is not the best evidence and the bulletin or written order would be the best evidence.

The Witness: We have them.

Mr. McRoberts: Then I ask the answer be stricken out and the bulletin itself be offered as the best evidence.

The Court: Objection sustained.

Q. (Mr. Bond) Is this the bulletin that you referred to? "All safety engineers?" or have I the right paper?

A. No, sir, that is wrong.

Q. Well, I was going to take up that question of ours [fol. 523] right to the half hour later. I was just going to prove now this applies on these computations, that is all. I want the computations explained to the Court as to what it purports to show, and then we will go into whether it rightfully shows things later.

A. We have taken into consideration this extra half hour for six days a week, would make an additional three hours. And in the summary that I have in my hand at the moment, which happens to be R. M. Powell, as an example in the week of November 8, 1942, according to Defendant's Exhibit A, Mr. Powell was credited with 43 hours. We added an additional three hours under column 2b, making a total of  $46\frac{1}{2}$  hours. Under column 3, on the basis of the weekly wage paid by the defendant, and as indicated on the Exhibit A it was \$51.92. We determined that Mr. Powell's hourly rate was 1.30 per hour. Under column 5, which shows the excess hours as per column 2a, which is the hours as reported on defendant's summary, it shows an excess over 40 hours of  $3\frac{1}{2}$  hours. Column 6 is overtime due for the excess hours as per 2a, or as shown on Defendant's Exhibit A, we calculated at time and a half. Or in this instance, based on the rate of 1.30 an hour we calculated it  $3\frac{1}{2}$  hours at the rate of 1.95 per hour, or \$6.82. Under column 7, additional overtime due one-half

hour per day per column 2b, which you will note is three [fol. 524] hours in excess of the time indicated on Defendant's Exhibit A, at 1.95 per hour it figures \$4.87.

Q. Then you totalled those two columns 6 and 7 on the adding machine; didn't you?

A. Yes, sir. We took column 6 which is the overtime due for excess hours over 40 per week, as indicated by the hours submitted on Defendant's Exhibit A, and in Mr. Powell's case we calculated that he was due \$963.62.

Q. That is, as overtime for the hours spent in excess of 40 as appear on the time-card as set out in defendant's summary? Is that it? A. In Defendant's Exhibit A.

Q. And then in column 7 you have computed what is due if he is entitled to the extra half hour?

A. That is right. And in this instance it amounts to \$268.84.

Q. And you have added the two together to make the total claimed?

A. At the foot of the page we show column 6 plus column 7, which reflects the total overtime claimed of \$1232.46. And in addition thereto we have indicated that on the last page certain irregularities that we discovered, we indicate how we calculated certain claims with a star, each deduction. I find that on March 7th in the case of Mr. Powell, Defendant's Exhibit A, indicates that Mr. Powell worked only 29.9/10 hours that particular week.

[fol. 525]. Q. Was that March 7th? A. March 7, 1942.

The Court: Worked what?

Mr. McRoberts: Forty-three, isn't that?

Mr. Bond: Forty-three, that deduction is forty-three.

A. I am looking at March 7, 1942.

Mr. Bond: Yes, but if you are looking at the end note deduction you have an asterisk. Where do you find that?

A. March 7, 1942.

Mr. McRoberts: I think you will find that is forty-three.

A. I believe that is correct, that is 43. Mr. Powell according to Defendant's Exhibit A worked 29.9 hours that week. Therefore, since it was not in excess of forty there was no overtime calculated except under column 7 on the

basis that for 18 hours he worked he was entitled to an additional 30 minutes. We have under column 2b added the three half-hour periods. Or rather I cut it to two in this case which developed an hour for which he was not compensated, and we have added 1.95 plus. Then if you will note again on the last page indicated by a capital A, on page 2 or sheet 2, in the period of 11/21/43. And I may state that at that time the policy of the company to change the pay period from a weekly basis to a semi-monthly basis, Defendant's Exhibit A set the pay periods by indicating the hours worked in each weekly period. And on the pay period ending 11/21/43 Mr. Powell worked [fol. 526] 49.8 hours the week of that period. The second week he worked only 32.4 hours. So on the basis of our computation Mr. Powell was entitled to 9.8 hours at the overtime rate on the first week, and on the second week since he failed to work 40 hours or in excess thereof, he was entitled to a rate basis at the regular rate. So we computed his 32.4 hours at the regular rate of pay. And you will [noticed] under column 5, excess hours as per 2a, we have inserted the abbreviated word ADJ, and under the column 6, overtime due for excess hours as per 2a, we have shown the amount of \$10.47. If you will again refer to sheet 3 you will note a capital letter B which indicates again by referring to sheet, third last item on the sheet, for the period of April 9, 1944, according to Defendant's Exhibit A Mr. Powell worked 40 hours, and although he had been regularly receiving \$110.77 every two weeks, the company paid him under column 4 gross wages only \$46.15 for 40 hours' work, which resulted in an underpayment of 9.23, which is reflected in column 6. In other words, it was an incorrect payment and should have been one-half of \$110.77, or \$55.38.

Q. Now I call your attention to page 2, or sheet 2, of plaintiff's claim, second pay period from the top, 6/13 with a star after it. A. All right.

Q. Does that indicate a deduction for absenteeism?

A. It indicates a deduction for something, and ap-[fol. 527] parently he was charged with one-tenth of an hour because he failed to put in forty hours.

Q. It shows in the second column 39.9 hours, which is one-tenth of an hour short. A. That is correct.

Q. Was there any deduction made in his gross pay?

A. There was.

Q. How much? Wasn't it 13 cents?

A. He didn't receive \$51.92 on this date; he received only \$51.79.

Q. And is \$51.79 13 cents less than \$51.92?

A. Yes, sir, it is; but I might also refer you to sheet 1.

Q. Let's get through this first. A. All right.

Q. And the hourly rate, as you computed it, was 1.30?

A. Yes, sir.

Q. And 13 cents is one-tenth of that? A. Yes, sir.

Q. What does that indicate?

Mr. McRoberts: Just a moment. Object because that is an opinion and conclusion of the witness.

Mr. Bond: It is not; it is mathematics.

Mr. McRoberts: Well, if it speaks for itself, why have the witness testify on mathematical matters.

The Court: He may answer.

[fol. 528] A. I think as a mathematical proposition it indicates the man was docked 13 cents because he failed to put in 40 hours.

Mr. McRoberts: Ask the answer be stricken as an opinion and conclusions of the witness.

The Court: sustained.

Mr. Bond: I would like to call your attention to these figures, then. I would like to call your attention to the fact the pay period ended 6/13/43. Mr. Powell is shown on Exhibit A as having put in 39.9 hours' work. He is shown as having received a gross pay of \$51.79. The week before he is shown as having put in 40 hours even and he had a gross pay of \$51.92. I call your attention to the fact that the difference is 13 cents. He got 13 cents less the week he worked one-tenth of an hour less, and one-tenth of 1.30 is 13 cents. And I argue from that that the defendant used exactly the same method of computing the hourly rate to make a deduction against a man's pay that he used in computing the overtime on his pay.

Q. Are there any other instances like that?

A. Yes, sir, there are.

Q. Call attention to a few, please.

Mr. McRoberts: Is it necessary to go through all of these things? Can't you do that on argument at the end of the case or on brief rather than have the witness point out things?

Mr. Bond: Yes, if I may ask him the general question.

Q. You have gone carefully over this summary?  
[fol. 529] A. I have.

Q. Does that same situation occur frequently? A. It does.

The Court: It is the usual time of recess. Announce a recess until 2 o'clock.

Thereupon, at 12:30 P. M., July 8, 1946, a recess was taken until 2 P. M. The proceedings were then resumed as follows:

(Four pamphlets are marked "Plaintiffs' Exhibits C-1, C-2, C-3 and C-4, respectively.)

Mr. Bond: At this point, if the Court please, I desire to introduce in evidence certain extracts from this pamphlet entitled "Your job with the St. Louis Ordnance Plant," which have been marked by the reporter "Plaintiffs' Exhibits C-1, C-2, C-3 and C-4. I will say that the defendant's interrogatories admit that it was issued to the employees by defendant in four editions. And they also admit under Rule 36 the genuineness of the copies I have. I only wish to offer the following from page 23 of the Third Edition, and the same or substantially the same language appears in each of the other three.

"Standard Hours of Work. There will be eight hours in any working day, and forty hours will constitute a working week."

Mr. McRoberts: Let me make an objection to this. We object, if Your Honor, please, to the statement which [fol. 530] Judge Bond is offering in evidence is merely a statement that they will be paid the rate under the legal overtime rate as provided under the Fair Labor Standards' act. Now, if the act applies they will have to pay. If the act does not apply, and we contend it doesn't apply, it is not an admission against interest on the part of the defendant.

Mr. Bond: I think it is, Your Honor.

The Court: Admitted subject to the objection.

Mr. Bond: The title of the paragraph is "Standard Hours of Work," and the body of the paragraph:

"There will be eight hours in any working day, and forty hours will constitute a working week. To meet the schedule required of us by the National Defense program, it will be necessary to employ three shifts on production operations. When production demands require a longer work day or longer work week, the company will pay the legal overtime rate as provided under the Walsh-Healy Act and the Fair Labor Standards Act. When three shifts are operating there will be rotation of first, second and third shifts every two weeks. A lunch period will be allowed on each shift and will be paid for by the company. That is, no deduction will be made for this lunch period."

Another paragraph headed "Payment of Overtime:"

[fol. 531] "Time and a half will be paid in excess of eight hours per day or forty hours per week."

Q. (Mr. Bond) Now, Mr. Harris, in telling about the half hour you were required to appear before shift you said there was a bulletin issued on the subject.

A. That is right.

Judge Bond: I will identify that as "Plaintiffs' Exhibit C-3". That is the one I read from. The same language appears on the same page, I think, in all the other editions.

[fol. 591a] (Plaintiffs' Exhibit C-3)

### Your Job with the St. Louis Ordnance Plant.

Third

[fol. 592] Foreword.

Every prospective employee of United States Cartridge Company should read this booklet describing the Company's policy and procedure.

Every regular employee *should re-read this booklet* from time to time, in a wholehearted spirit of co-operation

with the entire organization and particularly, with a firm determination to assist the United States Government in the objective set for this important undertaking in support of the National Defense.

Any prospective employee who cannot subscribe to the basic principles outlined in this booklet should not accept a job with the Saint Louis Ordnance Plant, since he or she will feel distinctly out of place in this great congregation of men and women pledged to true American ideals and the fulfillment of a patriotic duty to our great Nation.

[fol. 593]

## Part I.

### Your Job . . . And the United States Government.

The Saint Louis Ordnance Plant is an important part of the National Defense program.

It has been charged with a great responsibility in the nationwide effort to prepare our country against the possible encroachment of foreign enemies upon our sacred soil.

No man or woman should accept employment with the Saint Louis Ordnance Plant unless he or she is willing to accept the full obligations of good citizenship, and subscribe to the rules and regulations laid down by our Government for the operation of industrial plants of this character.

Our basic task is to produce large quantities of high quality ammunition for our Government. This production of high quality ammunition is a fundamental responsibility of every man and woman in our organization. We have been supplied with the finest of buildings and equipment, and it is the obligation of each and every employee to perform the duties assigned to him as if he alone were responsible for the perfect functioning of the cartridges he has help to manufacture.

One jammed machine gun, caused by defective ammunition, may cost the life of a gallant pilot, or the lives of companies or detachments through similar failure to function in the weapons of ground troops. Let not one of us ever feel that a little more care here, or a little more [fol. 594] concentration there, would have saved the life of

the pilot in the air, or the lives or liberty of the ground detachment. Ours is truly a sacred responsibility—a responsibility for the lives as well as the ultimate victory of any American Army which may be called upon to use our products in time of war.

The Saint Louis Ordnance Plant is wholly owned by the United States Government. The United States Cartridge Company is the operating agent. The plant is being equipped at the out-set to produce .30 caliber and .50 caliber ammunition for small arms and machine guns. It is one of the very largest manufacturing operations being undertaken by the Government in connection with the National Defense program, and its establishment and continued successful operation have been made possible only by the sincere co-operation of Metropolitan Saint Louis and its cooperating agencies. Thus, there are four separate and distinct interests in the successful operation of this plant, each from its respective viewpoint:

1. The United States Government, which is relying upon us for an unbroken flow of millions of cartridges each working day.
2. Metropolitan Saint Louis, which is the home of most of our employees, and which is gladly assisting us in the maintenance of police protection, fire protection, et cetera.
3. Our Employees—who owe an obligation of good citizenship both to the United States Government and to Saint Louis, as well as their sincere loyalty to the Company as their employer.
4. The Company—which is responsible to the United States Government for ammunition production, to the City of St. Louis in maintaining a successful civic enterprise, [fol. 595] and to our employees, for the establishment of working conditions conducive to the health and happiness of each man and woman employed in the plant.

Even if we were not engaged in the production of ammunition for the United States Government, plant protection is a greater necessity in our industry than in most other lines of manufacture. Not only must we look to the high quality of our product from the National Defense standpoint, but it is unfortunately true that careless manufacturing practices on the part of either the company or its

employees can lead to serious consequences. Thus, the Company must not only enforce the regulations issued by the Ordnance Department of the United States Army for the protection of National Defense industries, but must also safeguard the plant and its equipment from the serious effects of fire, accident, et cetera.

Many of you who have worked in other plants not engaged in the manufacture of ammunition or similar products may find it difficult to understand why unusual precautions are necessary to prevent fire, mechanical breakdowns, and similar interruptions of normal operations. We feel that once you have entered into the spirit of our undertaking, you will soon realize that all our precautions are for *your* protection. Whatever protects the plant, protects you. It is primarily to *your* interest to see that interruptions of production, due to sabotage or carelessness, do not occur. Each employee is urged to call the attention of the management immediately to any condition, involving men or machinery, which should be investigated and adjusted in the common interests of the workers in our organization.

### Discipline.

The only possible manner in which the Company can insure proper protection of the plant and its employees is to enforce organizational discipline. This is not the kind of [fol. 596] discipline which exists in the dictator nations. It is, rather, discipline under the American system—a co-operative pledge on the part of each and every employee to achieve a common objective and conform to the regulations imposed by the War Department and the rules established by the Company. Restraint of undesirable traits in the individual must be exercised to protect the entire organization from the thoughtless actions of a possible irresponsible few. In effect, the discipline the Company will require simply amounts to each employee's doing his job in an orderly manner according to the best known method for protecting himself and his fellow workers, thus insuring the establishment of pleasant working conditions for all concerned.

### Investigation.

It is conceivable that a potential enemy of our country might attempt to obtain employment and circulate among us in the guise of a fellow worker. Because of this ever-present danger, applicants for employment with United States Cartridge Company are subjected to a much more rigid investigation than are applicants in most other industries. We again call your attention to the fact that this inconvenience to the many is necessary for the elimination of a very few, and good humored compliance with our requirements in the investigation of applicants is absolutely essential if you are to fit successfully into our organization. No new employee is considered a part of the regular force until all references have been checked and found satisfactory. Under a temporary arrangement a new employee may be permitted to go to work pending the completion of the investigation.

### Identification.

As a matter of identification, each employee is finger printed and photographed to conform with the military [fol. 597] regulations provided for all ammunition manufacturing plants by the War Department. A badge containing the employee's photograph, number and location designation must be worn at all times when the employee is in the plant. Should you lose your badge report at once to the Employment Office for a pass and file a request for a duplicate. Your first badge is provided for you free. Replacements will cost you One dollar, (\$1.00). Take good care of your badge.

### The Sabotage Law.

There is a United States federal law, Title 18, Section 82, of the Criminal Code, setting forth punishment and penalties for purloining, stealing or injuring property of the United States or property manufactured under contract for the War Department. A copy of this law in its entirety is posted on the Bulletin Board at the main gate and should be read by our entire employee force.

## Espionage Act.

Another federal law, Title 50—War Chapter 4—Espionage, Sections 31 and 41, inclusive, of the above Chapter, United States Statutes, define and prohibit acts of Espionage, and prescribe severe punishment for violations of their provisions. Those statutes apply to the business and all operations conducted by this Company. Your attention is directed to the full text of these Statutes posted on the bulletin board at the main gate. You are requested to read and familiarize yourself with the provisions of the Espionage Act.

[fol. 598]

## Part II.

### Your Job . . .

### And the Company.

This Company has pledged its word to the United States Government to conform to the standards set up by the Ordnance Department for National Defense plants.

This pledge carries with it the establishment of the most pleasant working conditions consistent with the character of our operations. In brief, working conditions in our plant include the following primary considerations:

- (1) The physical surroundings in which the employee works.
- (2) The relationship between the Company and its employees.
- (3) The general control of manufacturing processes.
- (4) The observance of policies and rules.

In consideration of these subjects of mutual interest to both the Company and its employees, the Company takes the position that its own success as a manufacturer of ammunition is definitely tied in with the success of its employees. Each individual employee who cares to continue with the Company should be vitally interested in the success of the Company. Neither can long endure or succeed without the other, since we are all a vital part of the Defense Program. Our Government needs our help,

as we need the protection of our Government. As free men in a Democratic Nation, there must be co-operation between all parties.

### [fol. 599] Department Of Industrial Relations.

As a means of insuring this co-operation, there has been established a Department of Industrial Relations, which has a double function. It represents the wishes of the employees to the management, and the policies of the management to the employees.

This department is not responsible for production, nor the quality of the product, but is especially charged with the duty of giving first consideration to employment, safety, health, sanitation, education and training, and the items of human interest to both the workers and their supervisors. The Director of Industrial Relations is a specialist in friendly counsel to every employee, executive or worker, who cares to call on him. His staff assistants keep a careful record of your work and your interest in that work. Should you acquire some new skill, tell the Director of Industrial Relations so that it may be made a part of your permanent record.

### Handling Of Grievances.

If you are dissatisfied, or have any misunderstanding, do not brood over it. Get it cleared up by talking with your supervisor, who is never too busy to discuss your problems with you. Then, if you are not satisfied, you are free to talk it over with the Superintendent of your Division, or the Department of Industrial Relations. You need not hesitate for any reason in following this practice. Accumulation of unspoken, unanswered grievances results in dissatisfaction. Dissatisfaction destroys what otherwise can be a pleasant work relationship. Consequently, for our mutual benefit your supervisor will appreciate your questions and will be glad to give explanations.

Employees are encouraged to talk over with their foreman any problem they may have. Should they not get full satisfaction from their foreman, they may discuss their [fol. 600] problems with the general foreman, or with the

Director of Industrial Relations. It is the sincere desire of the Company to grant each employee a full hearing in the case of a conflict of opinion, since mutual confidence and frankness will solve practically any problem that may arise.

### The Health Of Employees.

Each employee's health is a matter of concern to the management, and fellow workers. Our medical facilities are available to each employee to treat accidents and minor ailments occurring in the line of duty or on company premises. It is the obligation of all employees to protect their health by using the facilities provided, as well as in their own activities outside the plant.

### Treatment Of Injuries.

In addition to the Medical Department in the Employment Office, there are First Aid Stations in each of the manufacturing units. All injuries, no matter how slight, should receive immediate treatment. In case of injury, notify your foreman at once and he will send you to the nearest First Aid Station.

### Outside Medical Bills.

The Company will not be responsible for any bills of outside medical attention unless proper written order giving permission to call upon such doctor or doctors is obtained in advance at the office of the Medical Director in Building 107.

### Safety From Accidents.

Safeguarding our employees from accidents is the greatest and most important task before us at all times. Safety signs and safety rules are posted in central locations for your guidance and your protection. The management never expects an employee to risk injury by taking [fol. 601] chances. Common sense is always the best safety measure. A temporary lapse in safety consciousness is the primary cause of injuries and accidents. Train yourself to think and act safely. Furthermore, when you see a safety hazard, do not hesitate to draw it to the attention

of your supervisor. This might prevent an accident, even prevent the injury of a fellow worker. *Don't leave it to the other fellow—he might be leaving it to you.*

The safety rules established throughout our plants are the result of careful research, and they are intended to maintain every safety factor with regard to your job. Thus, their rigid enforcement is necessary to protect you from all hazards. When these rules are applied and observed ammunition manufacturing is not a hazardous industry. It does deal with explosives, however, which in themselves are extremely dangerous if they are carelessly handled. This fact must not be lost sight of at any time, and the safety rules must be strictly observed to avoid accidents and injuries.

#### Canteens for Employees.

Canteens are provided in each of the manufacturing units for the convenience of all the employees in each respective unit. Smoking is permissible in each canteen. Employees may bring their own lunches or they may purchase their meals at the canteen counter. All lunches are to be eaten in the lunch room and not in the plants. No refreshments may be taken into the plants, but must be consumed in the canteens. There can be no exception to this rule, since its primary object is to prevent the distracting of attention from normal mechanical operations.

#### Lockers for Employees.

Separate locker rooms for men and women employees are provided in each manufacturing unit for each employee in that unit. Lockers are assigned to new employees. [fol. 602] Employees are expected to be responsible for the locks and keys which are issued to them. In the event keys are lost, however, new ones can be obtained by applying at the Employment Office and paying the cost of replacement. Locks and keys are to be returned in the event of termination of service. If they are not returned a charge of One dollar, (\$1.00) will be deducted from the final pay. Only Company locks are to be used on lockers. Smoking is permissible in each locker room only during shift changes.

### Smoking Privileges.

As has been previously stated, ammunition manufacturing can become a hazardous operation through carelessness, especially in the explosive division. Therefore, for your safety, it must be a recognized rule that no matches or lighters will be allowed on your person when inside the plant gate. It will be the duty of the patrolman at the gates to inquire of you in this respect. Leave your matches at the main gate. Smoking will be allowed in the canteens and in the locker rooms, and smoking must not be done anywhere else on the plant property. For your convenience, electric lighters will be provided in these smoking stations. Strict observance of these smoking rules is necessary for your individual safety and the safety of your fellow workers. Violators will be subject to disciplinary action, which may include immediate dismissal for serious infractions of the rules.

### Unemployment Compensation.

The Saint Louis Ordnance Plant is governed by the laws of Missouri. The Company contributes an amount equal to 3% of the annual wage of each employee—not exceeding \$30.00 per employee—to this fund. In case of unemployment, you are entitled to the benefits as a matter of legal right. Consult the Employment Manager for details, and help in securing the benefits as provided by law in Missouri.

### [fol. 603] Workmen's Compensation.

Employees of the Saint Louis Ordnance Plant are protected in the case of certain accidents under the laws of Missouri. It is our sincere hope that none of our employees will need the compensation, yet the Department of Industrial Relations will advise you as to your rights should you be the victim of a lost-time accident for which compensation is provided.

### Social Security.

Deductions are made from the pay of each employee of the Saint Louis Ordnance Plant for the Social Security fund, as required by law. The Company makes a like

contribution to the fund for the employee's benefit. Until 1943 the deduction from the employee's pay will be *one per cent* (1%) and the Company will contribute *one per cent* (1%) of the amount of the employee's pay subject to a maximum deduction of \$30.00 from the pay of each employee during any one year. The *one per cent* (1%) contributed by the employee is a part of the employee's total compensation for work. The employee should guard carefully his Social Security Card, as this is important to his later pension.

### Recreation.

It is not the policy of the Saint Louis Ordnance Plant to take the lead in providing for the recreation and social life of its employees. It believes that the employees prefer to initiate these things themselves. Besides, there are very few recreational activities in which all employees of all departments could participate due to the variations in working hours, and other conditions. The Director of Industrial Relations stands ready to help in any recreational program in which large groups of our employees would take part or indicate interest.

[fol. 604]

### Polities.

The Saint Louis Ordnance Plant hopes each employee will register and will vote at all elections. It is a grand American privilege. How you vote and for whom you vote is your own business. If anyone in this Company, from office boy to manager, implies knowingly or unknowingly, directly or indirectly, that you as an employee should vote a certain way, ignore it, and use your own good judgment. Any political activity on the Company property is in direct violation of Company rules, and is subject to disciplinary measures in proportion to the gravity of the offense.

### Solicitation of Employees.

The Company believes employees should be solicited, by the various charities, at their homes on the same basis as other citizens. Therefore, solicitation is not allowed on Company property during working hours either by Company Employees or by outside solicitors. Neither does

it allow the payrolls to be used for the accumulation of funds for charitable or political purposes through the medium of payroll deductions.

### Bulletin Boards.

Read your bulletin boards from time to time. Bulletin Boards are located throughout the plant for notices of interest to Employees but in particular for safety posters. They will be displayed to encourage your safety consciousness. These boards are maintained by the Industrial Relations Department. Nothing will be allowed posted on these boards without the approval of that Department.

### War Service.

Any employee who enters Military service of the United States Government, and who upon completion of this [fol. 605] training furnishes a certificate of completion of service, and who is qualified and physically able to do available work and makes application for re-employment within thirty (30) days after he is released from such service, will be re-employed on available work similar to that which he was doing before he left, at the then current rate of pay.

[fol. 606]

### Part III.

#### Your Working Conditions.

The management of the Saint Louis Ordnance Plant recognizes that there are certain conditions surrounding your employment which must remain fixed and inflexible regardless of what changes the company or its employees might desire to make.

Some of these fixed conditions arise from legal considerations. Others are imposed by the United States Government, while still others have been evolved by the company out of its long experience in the ammunition business.

The company considers it a responsibility of the management to enforce all Rules and Regulations, regardless of their source. Thus, in its relations with so many thousands of employees the company has established a fair and

impartial system for the enforcement of its Rules and Regulations.

When a foreman and his immediate superior deem it necessary to discipline an employee, the foreman must prepare a written statement of the reasons on a form provided for that purpose. The statement will also contain his recommendation of the penalty to be applied under the published Rules and Regulations. It will also have the indorsement and comments of his immediate superior. A copy of this statement will be given to the employee, and the original will be sent to the Department of Industrial Relations.

The employee may discuss the matter with his superior, and shall be afforded the opportunity of discussion with the Department of Industrial Relations without the presence of the foreman, or anyone else having anything [fol. 607] to do with the complaint. The written statement must contain all facts concerning the complaint, a memorandum of the employee's statement regarding it, and a record of the final disposition, all of which become a part of the employee's personnel record.

#### Physical Requirements.

Employees are expected to be physically able to perform the work required of them at the time of hiring. They are responsible for exercising reasonable care so that they will continue to be able to carry on their work.

- (a) A physical examination is given to each employee at the time of hiring.
- (b) A physical examination is required when an employee returns to work from an absence extending beyond the period of one week.
- (c) Periodic physical examinations will be given to any employee engaged in work that might possibly influence his or her health.
- (d) These examinations are not for the purpose of exclusion of employees but to assist in properly placing them on jobs and to protect them against possible dangers.

### Requisitions for Help.

Employees can be added to the payroll only by the Employment Department and then only when it has been presented with a requisition authorizing the addition.

### The Employment Dept.

The Employment Department has the final authority to hire, when it receives formal requisitions from those authorized to issue them. The Employment Department and the Department of Industrial Relations have as their responsibilities the establishing and carrying out of policies [fol. 608] that are mutually beneficial to the employees and to the company. Their functions are not to replace the foreman, but to aid both the foreman and the individual worker. Either the foreman or workers may feel free to come to the Director of Industrial Relations or his representatives with any problem. The Department of Industrial Relations will try sincerely to be of service. It serves the plant as a whole and at times can get a clearer picture than an individual or a single department.

### Age of Employees.

The Saint Louis Ordnance Plant has no special age limits for employees, and has no intention of establishing any, except that minors must have reached their nineteenth (19th) year. Each individual's employment is conditional only on his or her ability to perform the required tasks.

### Status of Employees.

Each worker is considered an employee in the classification or occupational group for which he or she has been selected, and in the plant unit to which he or she has been assigned.

(a) Employees may be transferred from one classification to another classification, or from one plant unit to another plant unit, when production requirements make it necessary. As far as possible, the wishes of each individual employee will be considered in such transfers.

(b) Promotion may be made from one classification to another classification having a higher rate of pay, such promotion to be based primarily upon the qualifications of the individual; and in those promotions, the best employee will be sought, regardless of influences other than merit.

[fol. 609]

### Clock Cards.

Each employee when hired will be assigned a clock number and given a clock card by the Employment Department. This card number will correspond to the employee's badge number. The new employees will then report to the foreman for instructions before ringing the card. Clock card must be registered at starting time and quitting time, and also when working overtime on the regular shift as indicated. For timekeeping purposes, a tenth of an hour, (six minutes), will be a time unit.

The ringing of a clock card other than employee's own will be construed as an act of dishonesty, subjecting the employee to disciplinary action. If, through error, you have accidentally rung a clock card, other than your own, report this matter immediately to your timekeeper. Failure to ring your clock card either at starting time or quitting time will require your foreman's signature to qualify the time, and for every instance of such nature, two tenths of an hour, (twelve minutes) will be deducted.

You must *not ring in* earlier than fifteen minutes before the normal starting time of your shift and you must also *ring out* within fifteen minutes following the normal closing time of your shift. If authorized to work overtime by your foreman, he will give you an overtime card and you must ring in on such card when starting the overtime work and also ring out on it when the overtime period is ended.

### Wages of Employees.

It is the policy of the Saint Louis Ordnance Plant to pay each employee a wage in keeping with the rates determined by the Ordnance Department of the United States Army for ammunition production. Since our product is for our United States Government, and since each em-

ployee is a part of our government, it is naturally expected [fol. 610] that each employee will strive diligently to turn out an honest day's work for a fair wage.

The company pays you your wages but it is immediately repaid by the United States Government.

In the final analysis, your wages come from the United States Government, whose only source of income is taxes collected from you and all other citizens.

The United States Cartridge Company is merely managing the plant for the Federal Government.

An employee's remuneration consists not only of the money he receives each payday, but also the Company's contribution to the Social Security, Workmen's Compensation for accident protection, and Unemployment Compensation funds.

#### Rates for Men Employees..

Male production employees will be hired at a starting rate for their respective classifications. They will work for that rate for thirty days, then if continued in that job classification, their rate will be automatically increased five cents an hour. At the expiration of the succeeding sixty days of employment, their rate again will be raised automatically five cents an hour. At the end of the following sixty day period, representing a total continuous employment of five months, they will receive automatically another five cents an hour increase in their hourly rate, and with this third increase their rate will reach the maximum pay in their respective classification.

#### Rates for Women Employees.

Female production employees will be hired at the starting rate for their respective classifications. They will work at that rate for thirty days, then if continued in that job [fol. 611] classification, their rate automatically will be increased two cents an hour. At the expiration of the succeeding sixty days of employment, again their rate will be raised automatically two cents an hour. At the end of the following sixty day period, representing a total continuous employment of five months, they automatically

will receive another two cents an hour increase in their hourly rate, and with this third increase, their rate will reach the maximum paid in their respective classification.

#### Rates for Skilled Employees.

Employees of the Machine Shop, Tool and Gage Shop, Electrical Shop, Pipe Shop, Carpenter and Millwright Shop, and those in other skilled groups, exclusive of production people, will have a starting rate, not subject to automatic increases, for each of their respective classifications. Their rates will be subject to increase from time to time, within the five month probationary period and such increases, at the discretion of their immediate supervisor, will be made on the basis of merit and efficiency. *This rule will also apply to clerical and office occupational hourly paid employees.* It is the responsibility of the supervisory force to consider carefully the potentialities of every employee for the purpose of judging what the individual can do best, and how he can advance. The supervisory force endeavors to give the same training opportunity and the same privilege of advancement to all employees consistent with ability and circumstances so that all may have the same chance to qualify for advancement.

#### Rates for Labor.

Yard labor, unloading and storing labor, car and truck loaders, janitors, porters and other service labor will be hired at a starting rate, not subject to automatic increases. Thereafter their rate at the discretion of their supervisor, in recognition of merit and efficiency, will be increased from time to time during the five month probationary period until the maximum rates of their classification is reached.

#### [fol. 612] Job Description and Rating.

A job description and rating procedure has been established for all jobs within the organization. This provides for a description of the job and an analysis of the various factors that constitute the job requirements. At least three persons including the Department head, who possesses an intimate knowledge of the job, and the Director of Industrial Relations, review the description and rate each job.

Through this procedure it is possible to establish related rates of pay for various jobs in accordance with the degree of skill and responsibility required.

These job ratings combined with periodic wage surveys conducted by the United States Government provide the management with the means of establishing and maintaining sound wage rates in accordance with our published policy.

#### Standard Hours of Work.

There will be eight hours in any working day, and forty hours will constitute a working week. To meet the schedule required of us by the National Defense Program, it will be necessary to employ three shifts on production operations. When production demands require a longer work day, or longer work week, the Company will pay the legal overtime rate as provided under the Walsh-Healey Act, and the Fair Labor Standards Act. When three shifts are operating there will be rotation of the first, second and third shifts every two weeks. A lunch period will be allowed on each shift and will be paid for by the Company, that is, no deduction will be made for this lunch period.

#### Payment of Overtime.

Time and one-half will be paid in excess of eight hours per day or forty hours per week. Time and one-half also is paid for authorized work on Sunday and national holidays [fol. 613] days, except in departments or occupations where the established schedule requires seven days continuous operations. This means that overtime is paid for Sunday work and holidays on repair, maintenance, mechanical and new routine process operations, but not for work such as watching, plant protection, or continuous procedure operations. The following national holidays—New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, will be observed.

It will be the policy of the Company to avoid work on Sundays and Holidays as far as possible. However, since we are a part of the National Defense program, we shall have to adjust our schedule according to the needs of the situation.

### Wage Payments.

Wages will be paid to the person to whom such money is due or to such properly identified person as may present the written order of the employee.

### Fixed Pay-Days.

Payday will be on Friday of every week. Your pay will be delivered to you in your department. Wages unclaimed on payday can be had by applying at the pay-station in the Employment Office which will be open, daily except Saturdays, Sundays and holidays during the hours posted at the main gate.

### Garnishment of Wages.

Garnishment of an employee's wages is costly to the Company, and requires the time of other employees which should be devoted entirely to the Defense Program. Therefore, the Company can not tolerate such proceedings, and if an employee's wages are garnished, such fact will be reason for the immediate suspension or dismissal of the employee.

### [fol. 614] Voluntary Leaving.

In cases where employees voluntarily leave the service of the Company, three (3) days notice is required before the final pay will be available, two work days after the closing of the last day worked. Your foreman has blanks for notification of intention to leave. In the event you do not give this notice, you may be obliged to wait for your wages until the regular payday.

### Handling of Dismissals.

Employees who are dismissed for violations of rules or other sufficient reason will receive their pay as soon after their separation as it is possible to make it up. All final payments of wages are made at the Paymasters Office in Building 107.

### Termination Interview.

Whenever the employment of a regular employee is concluded for any reason, a termination interview is given by

the Department of Industrial Relations. The purpose of the interview is to permit a discussion of the employee's work and experience and thereby facilitate the adjustment of any unsatisfactory condition which may have arisen.

#### Attendance.

Regularity in attendance is a characteristic of every reliable employee, irregularity throws an additional burden upon those employees who are on the job. Regularity and punctuality are habits that can be easily acquired. Each employee is expected to be on the job every work day. In case of unavoidable absence, notify your foreman if you know ahead of time. In any event phone the Employment Office just as soon as possible. If you are too ill to phone yourself, have someone else call for you.

#### [fol. 615] Leaving During Working Hours.

Employees wishing to leave the plant during working hours should obtain an "Exit Pass" from their immediate supervisor. The pass is to be given to the patrolman at the main gate. The clock card must be *rung out* when leaving.

#### Leave of Absence.

Employees may be granted a written leave-of-absence for a period of one week by the Employment Department for reasons satisfactory to that Department, and the employee can return to work at its expiration without physical examination. However, if for good cause, such leave is extended by the Employment Department, the employee upon return to work again must pass the physical requirements.

#### Change of Address.

It is important that you keep the Employment Office informed of any change in your address. Please do this immediately as it is very important that your record show your correct address at all times.

#### Relief on Continuous Operations.

For each group of machines which require constant attention, an extra operator will be provided in order to per-

mit a reasonable relief period for each operator in that group.

### Employment of Relatives.

No person is employed to work under the direct supervision of a relative.

[fol. 616]

### Married Women.

The Company employs both single and married women. Each married woman employee may use her maiden name within the organization, if it corresponds to the name on her Social Security card.

### Promotion Policy.

As already stated, it is the policy of the Company to promote from within the organization when persons within the organization are the best qualified for the positions that are available.

### Rules of Personal Conduct.

The purpose of these rules is to promote safety and welfare for all employees and to maintain proper discipline and protect the company's interest. They are not to restrict the right of anyone, but to define and protect the rights of all. Infractions of rules and regulations cannot be tolerated and violators will be subject to disciplinary measures ranging from suspension to immediate dismissal, depending upon the seriousness of the offense in the judgment of the management:

#### Reasons for Suspension:

- (1) Violation of Safety Rules.
- (2) Deliberately ringing the clock card of another employee.
- (3) Engaging in horse-play.
- (4) Shouting or any other unnecessary demonstration.
- (5) Soliciting donations or collecting contributions of any kind.

- (6) Distributing or posting of written or printed matter of any description.

[fol. 617] (7) Operating machine tools or equipment by an employee who has not been specifically assigned to them.

- (8) Leaving the job during working hours without the permission of the Supervisor, except in case of emergency.
- (9) Failure to wear badge in plain sight.
- (10) Washing on Company's time unless permitted to do so.

#### Reasons for Immediate Dismissal:

- (1) Reporting for work under the influence of intoxicating liquor.
- (2) Smoking except in the Canteens and Locker rooms.
- (3) Stealing of Company or another Employee's property.
- (4) Being insolent or insubordinate.
- (5) Destroying Company property, tools and equipment.
- (6) *Fighting on Company's Premises*—Provocators of any altercation will be dealt with the same as the assailants.
- (7) Unwarranted interference with production in any manner.
- (8) Falsification of personnel record.
- (9) Frequent involvement in Garnishment proceedings.
- (10) Habitual absenteeism or tardiness.
- (11) Hurling refuse on the floors.
- (12) Gambling.
- (13) Running to the clocks at quitting time, crowding or pushing while in line.
- (14) Running in the plant.
- (15) Failure to work efficiently.

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[fol. 655] Q. In telling about that half hour that you said you were required to appear before shift, you said there was a bulletin issued on the subject? A. That is correct.

Q. An objection was made that you produce the bulletin. Look that over and tell us if that is the bulletin.

A. That is the bulletin.

Mr. Bond: I offer that, in evidence as "Plaintiffs' Exhibit G".

"Mr. S. L. Herting". This is dated June 3, 1942. "All safety engineers: Effective Friday June 4, 1942, the working hours for inspectors will be as follows:

A Shift, 7:30 A. M. to 4:00 P. M.

B Shift, 3:30 A. M. to 12:00 M

C Shift, 11:30—No, sir, I haven't been inserting those A. M.'s and P. M.'s. It isn't on the exhibit, but take it this way:

A Shift, 7:30—4:00 P. M.

B Shift, 3:30—12:00 P. M.

C Shift, 11:30—8:00 A. M.

"The time clock will be punched within fifteen minutes before the hour. In order that he may take advantage of the half-hour lap-over in shift time the following procedure for inspectors shall be used:

1. Punch time clock

2. Report to Chief Inspector's Office

[fol. 656] "3. Check files.

4. Obtain note-book and necessary material.

5. Report to unit and contact inspector from preceding shift.

S. L. HARTLING

[fol. 657] Q. Mr. Harris, what if anything do you know about where the ammunition produced at this plant went?

A. Well, the only thing I know of with regard to the destination of the ammunition, it was on two occasions

I was working in Building 105, which at that time was an experimental building of 60 calibre ammunition, and on one occasion we were required to produce a certain amount of test ammunition which was sent to Purdue University, Lafayette, Indiana. I saw the ammunition packed and saw it stenciled by the employees in 105 and saw it picked up.

Q. Picked up by whom?

A. By the company's truck. On another occasion we were required to pack test ammunition which was destined to Franklin University, Philadelphia, and likewise saw it packed, and stenciled and picked up by the Cartridge company truck.

Q. Now I show you here a group of magazines, the genuineness of which has been admitted, that contain the names and post office addresses of employees on the back with their badge number. I will ask you what they are. What do you know about them?

A. This was a plant publication.

Q. Did it come to your observation while you were out there? A. Yes, I received this in the mail regularly.

[fol. 658] Q. Regularly? A. Yes, sir.

Q. Mr. Harris, at the time that you entered into employment of the defendant's safety department, had you had any previous training as a safety inspector or engineer? A. No, not as a safety engineer.

Q. Did you have any? How far did your education go?

A. I had an Eighth Grade education, and in addition to that I had charge of safety for a trucking company.

Mr. Bond: That is all.

#### Cross Examination by Mr. McRoberts:

Q. Mr. Harris, you say you had no experience in safety engineering before you went to work for the Cartridge Company?

A. I would say none except that that I just mentioned.

Q. You signed an application for employment out there, did you not? A. I did.

Q. That is your signature on that application, isn't it?

A. It is.

Q. I call your attention to the statement on the inside in pencil. It says, "My work for the past ten years has

been principally of an executive nature. I have a working knowledge of accounting, safety engineering, traffic management, time and motion study and should be qualified for most any work in an office and perhaps some service in the plant." Is that in your handwriting?

[fol. 659] A. That is right, and I think it is for the lines that I just stated.

Q. So you did have a working knowledge of safety engineering at the time you applied for work and so advised the company? A. I think so.

Q. When you went to work in the safety department, what training was given you?

A. There was no training as I recall other than the weekly meetings that were held on each shift for, I think they lasted about an hour, and there was no training as such. It consisted of lectures and study of a booklet that was published by the company, aside from a First Aid course that they gave us.

(A pamphlet is marked "Defendant's Exhibit 1".)

Q. I show you a book that has been identified as Defendant's Exhibit 1 and ask you if that is a copy of the booklet to which you refer?

[fol. 660]

(Defendant's Exhibit 1.)

**Safety Manual  
For Plant Supervisors**

**Safety Standards**

by

**Safety Department  
Western Cartridge Company  
The United States Cartridge Company Division**

**St. Louis Ordnance Plant  
Saint Louis, Missouri**

August, 1943

**Manual No. 0370**

[fol. 661]

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[fol. 666]

## Introduction

The Safety Department has been established to aid the United States Cartridge Company in all phases of accident prevention, sanitation and health. It is helping to keep the Safety Standards of the Company well toward the top of the list among small arms ammunition plants throughout the country.

The Safety Department is headed by a professional Safety Engineer, and functions in an advisory capacity. Assigned to each unit or special function of plant operation is a Safety Engineer whose duty it is to inspect plant property, machinery, equipment, materials, operations and personnel, for the purpose of developing and applying corrective measures to prevent the occurrence of accidents. Rules, regulations, instructions, and discussions are periodically published by this Department. Safety Bulletins are posted in all units.

**Foremen:** The key to effective safety is the foreman.

1. Trained employees who have positions of authority and responsibility shall be held responsible not only for the specific duties of their positions but also for the enforcement of regulations and for vigilance in detecting any dangerous conditions or practices within their purview and for reporting same to their immediate superiors.

2. The foreman has no authority to waive or to alter safety regulations or to permit their violation by others.

[fol. 667] A. All foremen will familiarize themselves with the provisions of this Manual.

B. The foreman shall explain and invite the attention of all employees under his immediate supervision to standard safety regulations, stress the necessity of all employees living up to the spirit as well as the letter of safety regulations for their own sake as well as for the sake of others.

C. He shall supervise the training and instruction of employees either directly or through experienced operators until he is satisfied that the employee can work alone.

D. He shall report to his immediate superior cases & of all employees, who in his opinion, are not fitted for the work to which they have been assigned.

E. He shall satisfy himself as to the identity of any persons entering or approaching the building and their authority to enter or remain in a building or area in his charge. He has the authority and shall exercise the right to eject any person whose presence or whose actions are prejudicial to Safety.

F. He shall be responsible for the enforcement of placard orders. When the total number of persons, including operators, foremen, truckmen, inspectors, [fol. 668] repair men, visitors, and Government representatives exceeds the number permitted in the room, it is the duty of the foreman to cease operations and invite the attention of the people not regularly employed in the building to the excess number. If the notice is not effective in reducing the number of persons in the room or building to the number permitted, he shall withdraw his crew, until they may return to work in accordance with Safety Regulations.

G. When the amount of explosives in a room or building exceeds the amount permitted the foreman shall have the amount in excess removed, or cease operations during the time the excess remains in the room.

H. He shall require permissible tools, not in use to be in place on a tool board or holder. In case of the loss of tools in Manufacturing process rooms or buildings, operations should be stopped until he is satisfied that the loss cannot become the source of additional hazard.

I. He shall see that regulations regarding personal protective equipment, safety uniforms, safety shoes are observed.

J. He shall not permit major repairs or changes in any building, machinery, or equipment in buildings containing hazardous materials, until he has contacted [fol. 669] the Safety Department who will enforce the safety standards in buildings under repair in his area.

K. At the close of work, he shall satisfy himself before leaving, that all conditions in his room, building or area with regard to a shut down comply with orders. When not relieved by a shift, he shall see that windows and doors are closed and locked, and that any master power or light switches outside of the buildings are opened. Before the foreman leaves the building it will have to be approved by the Safety Department.

L. He shall bring to the attention of his immediate superior all places where railings, foot boards, lights, guards, hoods, automatic stops, or safety appliances are required.

M. He shall forward to his immediate superior all requests, suggestions, and complaints made to him together with such comments as he may have with regard to safety standards. These will be in writing and will form a part of the safety records of the plant.

N. The foreman of each shift or crew shall be responsible for the cleanliness of the area. He shall maintain all safeguards, prevent the blocking of safety exits and aisles, fire alarms and fire extinguishing equipment, and enforce all safety regulations applying [fol. 670] to the employees under his supervision.

O. He shall report to his immediate superior all cases where in his opinion the employees do not have sufficient room for the performance of their duties or where sufficient ventilation, heat, light or other necessities are not being supplied.

[fol. 671] General Repairs & Maintenance.

1. Repairs to furniture, equipment and structures will be handled through regular channels, except where safety is involved.

2. Where work as a safety precaution is requested, the Safety Department shall distinctly have shown on a work order requesting work to be done *Safety Precaution*. When memorandum so marked is received, it shall have preference over all other memoranda except those marked *Emergency*.

3. Report conditions requiring repairs to your superior; in case of doubt or concern, ask for help from Safety Department.

4. Faulty physical conditions and poor maintenance cause about 15% of our accidents. Make periodic inspections.

[fol. 672] Training in Safety.

1. The importance of safety should be impressed upon new employees.

2. All applicants are given a physical examination to determine fitness for work.

3. Foremen will train their new men to work safely, explain exits, fire fighting equipment and first aid procedure.

4. Occasional workers not familiar with explosives but required to make repairs or inspections near explosives will have the hazards fully explained to them by foremen.

5. The Training Department includes safety training as a regular part of the training program.

[fol. 673] Protective Clothing.

1. Appropriate protective equipment will be made available to all personnel whose duties require its use.

A. Safety Supply Store is maintained in the basement of building 204, where protective clothing and equipment can be procured.

All employees in production units should wear a uniform of the approved type, which consists of a sun tan coverall for the women and a sun tan coverall or sun tan pants and shirt for the men. Under no circumstances will female employees be allowed to wear dresses while working in manufacturing units. (For ruling governing the type of clothing to be worn on specific operations consult the Safety Equipment list.)

2. *Safety Shoes:*

A safety shoe is one which has toe boxes that are strongly reinforced to withstand the weight and impact

that is induced by falling objects. (For specific ruling governing the types of shoes to be worn consult the Safety Equipment list.)

A. Explosive operators' shoes will be worn in all explosive areas. This shoe commonly called a powder shoe, is equipped with a conductive sole which grounds out static electricity from the body.

B. Before an employee enters any magazine or building in which explosives are stored or processed, his shoes will be cleaned carefully of all mud, [fol. 674] grit or other foreign material.

3. *Special Clothing around Powder.* Safety uniforms and special clothing will be worn as prescribed by the management. The suits for men and women must have no metal buttons. They should have no pockets except skeleton pockets. When safety uniforms are required, a complete change of clothing is recommended. Street clothes will not be worn at work, and the clothes which are worn at work will not be taken from the plant unless they are in a safe condition.

Employees who are required to wear safety uniforms must not carry keys, coins, knives, or metal of any kind during the time they are in operating buildings.

4. Equipment should be frequently inspected by foreman or his authorized representative.

5. *Women's Clothing.* Safety clothing for women shop employees, as approved by Safety, must be worn. Basically, it consists of head covering, short sleeves, slacks, low heeled shoes, no jewelry. Women in powder area will dress as previously indicated (item #3). Women handling heavy objects will also wear standard safety shoes.

#### [fol. 675] Safety Equipment & Tools

1. In addition to *Protective Clothing*, other safety devices are needed for accident prevention efforts. Check the following against operations in your shop.

2. *Safety tools.* Non-sparking metal for use in areas of explosive vapors or dusts.

3. *Safety cans.* Closed containers for handling gasoline and solvents.
4. *Special carriers* for acetylene welding tanks.
5. *Ladder shoes* for securing grip on floors.
6. *Acid-carboy siphons*, pumps and rocker stands.
7. Non-skid *floor compounds* and paint, for stairways and floors.
8. *Machine guards.*
9. *Floors.* Mats and, special safety flooring. Floor cleaning equipment.
10. *Abrasive wheel guards, shields, safety flanges.*
11. *Emergency lighting system or units.*
12. *Waste disposal receptacles.*
13. *Spark-proof flash lights.*
14. *Fire extinguishers* and allied equipment.
15. *Ventilation* equipment such as hoods, ducts, booths, air movers, fans or blowers.
16. *Warning signs.*
17. *Dust collectors*—for dry abrasive, metallic or wood ducts.

[fol. 676]

**First Aid**

1. On serious cases of injury or illness, send for doctor at once. Do not move patient. Keep him warm. While awaiting help, follow previous first-aid instructions as given for your particular operation.
2. On minor cases, send injured to dispensary or nearest first aid room, with pass card.
3. *First-aid treatment.* First aid treatment will be supplied in all cases of injury no matter how slight.
4. *Equipment.* Stretchers, blankets, showers, gas masks, first-aid kits, etc., are distributed as authorized; know where they are around you and how to use them.

5. Dispensers or other means for supplying salt tablets should be provided near drinking fountain serving locations in which the nature of operations might result in exhaustion.
6. A program of rehabilitation will be arranged to help place injured employees back on some productive work.

[fol. 677]                    Sanitation and Health

1. The lack of sanitation in any establishment affects the alertness of workers. Accidents frequently have been traced to unsatisfactory conditions and to unwholesome and unhygienic practices. Observation of certain standards tends to eliminate accidents, discomforts, and industrial poisoning.
2. The major influence on the worker's general well-being and health is his mental attitude toward his work and outside activities. Worry, hate, fear, envy, pride, jealousy, vengeance, etc., are poisons to the system.
3. Facilities are provided, such as drinking fountains, toilets, lockers, etc. Keep them clean and use them as you would your own at home. Your treatment of them reflects your character.
4. Food handlers are required to pass periodic physical examinations.
5. Spitting on stairways in halls and in buildings is prohibited, and is dangerous to the general health of employees.
6. Toilets are inspected frequently. Equipment, chemicals and methods of cleaning will be approved by the Safety Department.
7. Use items of protective clothing where exposure warrants.
8. Use covered barrels for refuse; keep grounds clean.
9. Special physical examinations will be given to any employees exposed to Benzol, Explosives, Solvents, Lead [fol. 678] and Mercury. If certain defects are discovered, employees will be assigned to other work.

[fol. 679]

## Dermatitis.

1. People vary in their reactions to skin irritation. One person may be affected and the next be immune.
2. Some sources of skin irritation are:
  - a. Personal uncleanliness. (Most important)
  - b. Acids, salts, alkalies
  - c. Solvents
  - d. Soaps
  - e. Explosives and their derivatives
  - f. Oils, waxes
  - g. Photo developers
  - h. Dyes
3. Consider protective clothing, ventilation, mechanical or chemical changes, or transfer of personnel.
4. Where indicated, use protective creams on hands before exposure. Wash off before lunch and apply second coat before going back to work. This is for protection—not cure.
5. Cutting oils and emulsions often contain germs which get into the oil *after* its arrival. When the oil is shipped, it is sterile. Safeguard this oil supply in systems serving your machines. Do not spill or throw refuse in this oil. Systems can be cleaned out and sterilized but can be quickly contaminated again. Permanent filters and heating coils are available on some systems which carry the supply through at 150° to 180° F. Use of germicides in [fol. 680] cutting oils is not acceptable to the United States Public Health Service who has been contacted on this point. The Safety Department accepts the general health suggestions of this organization. Above all, keep oil clean—"you keep it healthy and it will keep you healthy." Note 2a above.
6. Use only soaps found acceptable and listed by Safety Department. Harsh soaps can cause skin trouble.

[fol. 681]

**Fatigue.**

1. Fatigue is to a great extent mental, or due to mal-adjustment to the job. Men who love their work can work for long hours, tirelessly, and under adverse conditions. Lives of famous people prove this. Consider mental attitude first.

2. Contributory influences, however, are recognized: in the form of poor ventilation, lighting, unhealthful working atmosphere, noise, hunger, posture, cleanliness, inefficient speedup of machinery, forced concentration to details, etc.

3. For manual workers who perspire in hot temperature, salt tablets may help. They are available near the water fountains. Four tablets a day should be the limit, with maximum of six. Office workers should stop fighting the heat, and relax—psychologically.

4. Rest pauses are provided twice a day for complete relaxation and rest. They should be used for this purpose, not for social gossiping. Food or beverages in small amounts during rest periods may be an aid in warding off fatigue.

5. General health and well-being contribute to avoidance of fatigue. If tiredness persists or is a habit, examine other more fundamental causes of ill-health.

6. Outside activity contributes to fatigue. These factors should be considered. Does worker get enough sleep? How is free time used? Are home conditions favorable?

[fol. 682] 7. Questions of speed, rhythm, noise vibration, clothing, and floors will be analyzed by engineers when specific exposure arises.

[fol. 683]

**Eating Habits.**

1. Lunches may be eaten only in designated places. They must in no case be eaten in rooms containing powder or chemicals. Do not eat in toilets.

2. Wash hands thoroughly before eating. Washing is especially necessary after handling explosives or any chemicals. Use mild soap approved by the Safety Department.

3. Dispose of waste food and refuse in cans for this purpose.

4. Canteen service is provided on the premises for those who do not care to bring their own lunches.

[fol. 684]

### Office Work.

1. Do not leave desk drawers open. They may cause worker to trip and fall.

2. Place waste baskets and other equipment out of the way to avoid tripping. Keep aisles open and free.

3. Do not run. Haste is responsible for most office accidents.

4. Watch your step on stairways, landings, and doorways. Too much haste here may cost you days later on.

5. Do not stand on chairs or desks.

6. Keep your desk neat—inside and out. Many punctures start here. Neatness also reflects efficiency.

7. Report furniture needing repairs, or which is hazardous to use.

8. Remember that fingers can be cut badly by running them along the edge of paper—especially on the glued strips on boxes and wrapping paper.

9. Do not use pins for correspondence attachments.

10. Maintain extension cords for electric equipment in good order. Do not make repairs but ask for experienced help.

11. Keep floors clean, but not slippery. Special cleaning compounds are available for various types of floors.

12. Know where the fire exit is, and how to get to fire extinguisher.

[fol. 685]

### Transportation.

1. Only especially authorized passenger cars will be allowed inside the company gates.

2. Speed limit is 15 M.-P. H. at the Plant Site; 20 M. P.H. at the Powder Storage Area. Speed limits for explosives

trucks on highways is 25 M. P. H. when hauling PETN, TNT, and Magnesium; 35 M. P. H. when hauling other chemicals. All state, county and municipal regulations must be obeyed.

3. Escorts must not ride on running boards of trucks. Room will be made on drivers seat, if possible. Otherwise escorts will walk.

4. No truck shall be backed except when guided by one person standing to the rear and to one side. Doors must be kept closed while truck is backing.

5. When parking trucks on an incline, one wheel should be blocked in addition to use of brakes.

6. No explosive truck will be left unguarded except when empty.

7. All explosive trucks should be equipped with safety mufflers, in addition to items required by I. C. C. regulations.

8. All vehicles will be given a thorough check-up every 1000 miles. Drivers shall not take out a vehicle which is in an unsafe condition. Any defects must be reported to mechanic when leaving unit in garage.

9. Helpers will not ride on couplings or trains being hauled by jitneys or tractors. If there is no room, on jitney seat, they should walk.

[fol. 686] 10. A small hand fire extinguisher will be carried by all motor driven vehicles.

11. Drivers should pass eye and heart tests yearly.

12. Bicycle riders will not hold onto the rear of trucks for a "lift."

13. Lights must be used on bicycles at night.

14. Bicycles will not be parked in the gutter against the curbing.

[fol. 687] Housekeeping.

1. All buildings and magazines in which there are explosives or ammunition will be kept clean. Waste paper, oil rags, or other inflammable waste materials will be placed in receptacles outside the building.

2. Aisles and exits. During operating hours, aisles and safety exits will not be blocked, and doors must not be fastened with any locks other than antipanic catches, or other quick-acting fastening devices.
3. Keep floors clean, free from oil, and in good repair. Lunch refuse or rubbish must not be left lying about.
4. Stack materials neatly, leave access to aisles, limit heights, tie in layers.
5. Painted lines on floor should be maintained as an aid to indicate areas to be kept free of extracts or materials. Always be prepared for emergency exits along aisles.
6. Explosives dust or other hazardous materials will not be allowed to accumulate on radiators, heating coils, or steam or hot-water pipes.
7. Waste materials, sweepings, or refuse contaminated with hazardous materials must not be left in or near operating buildings. It will be taken, as soon as practicable, in closed containers to the burning ground, to be destroyed in small quantities under careful supervision. All operating buildings must be kept clean and orderly, and their immediate surroundings must be maintained clear of rubbish, undergrowth or other readily combustible matter. [fol. 688] All implements must be kept in designated places.
8. In winter weather icy platforms, steps and walks shall be sanded. Icicles shall be removed from overhead when they are a hazard to employees.
9. In rooms where head clearance is low, as in cases of beams or trusses, contrasting colors should be painted on the obstacle, as red and white stripes. (Warning signs are less effective). It is even better, where possible, to stack materials such as files, boxes, cabinets, and stock directly underneath to protect the zone.
10. Do not leave tools lying about where they can fall or be tripped over.
11. Upon removing head from barrel or keg, bend over or remove the nails.
12. Avoid accumulation of debris from temporary jobs.

13. Realize that your particular working area reflects your neatness and efficiency. It is your "home" for the time you are at work—are you ashamed of it?

[fol. 689]

### Ventilation.

1. Normally the average person uses about 30 cu. ft. of air per minute. (Office; 15 cu. ft. with no smoking; 22 cu. ft. with smoking; strenuous physical activity—to 65 cu. ft.) If men indicate sleepiness, suspect foul air, and ventilate before an accident occurs. Factories should normally have 3 air changes per hour, offices 7; rest rooms 10.

2. Ventilation is mandatory for fumes and dusts having hazardous mixtures—see specific items concerned.

3. Exhaust hoods, fans, ducts and water sprays will be installed where needed. These are designated for specific uses, and no use should be made of them without proper authority. Alterations may be needed to make any new operation safe.

[fol. 690]

### Lighting and Wiring.

1. Adequate lighting in the right places is an important aid to safety. Watch out for shadows. Candle power of light at working plane can be determined and improved where necessary.

2. Lighting installations for illuminating rooms or buildings containing explosives, dust from explosives, or vapors from which explosives may condense normally will be designed to shine through panels such as approved. Electric lighting installations, located in rooms or buildings containing inflammable vapors or dust which may form explosive or inflammable mixtures with air, will comply with the requirements of the National Electrical Code.

The detailed requirements for lighting fixtures for hazardous locations prescribed in applicable Ordnance Safety Bulletins will be observed.

3. *Portable extension lights must not be introduced into operating buildings while hazardous materials are present. Any lights introduced must conform with requirements.*

4. Inspect extension cords for wear and possible short circuit.
5. Lights—Temporary or extension lights for use in magazines or buildings containing explosives or ammunition must be approved by the Safety Department.
6. Disconnect all portable electrical equipment and tools [fol. 691] when leaving work—especially for overnight.
7. Avoid temporary type of wiring. Keep it out of the way and protected.

[fol. 692]

Exits.

### 1. *Doors*

- a. All exits shall be marked plainly, and care should be taken that they remain unobstructed at all times. Outside doors must open outward. Safety doors, required in all buildings containing explosives, shall be double doors, glazed with clear wire glass. In no case will the opening be less than 2 feet 6 inches. During operating hours, in all cases, they must be fastened with antipanic catches only. All interior doors must be in the normal line of the flow of material and open in the direction of the flow of material.
- b. Before any railway car containing explosives or ammunition is moved, the car doors will be closed.
- c. When explosives or ammunition are left over night in cars or other conveyances, the doors must be locked securely, except in the case of railway cars which have been sealed for commercial transit.
- d. Two or more doors, when available, must be unlocked when personnel is working in a magazine in order that more than one means of escape will be available.
- e. Metal clad fire doors are hung to close automatically when a fusible link is melted by the [fol. 693] heat. Do not paint fusible links. Do not block the free motion of these doors.

## 2. Windows

- a. In explosive or other hazardous areas the windows are preferably of wire glass. Measurable protection from broken glass may be secured by screens backed or supported by heavy wire netting. This, of course, results in the reduction of illumination from the window thus protected. Woven copper wire screen, 16 mesh, backed up by 2-mesh galvanized wire cloth, have been found practicable for this purpose.

## 3. Stairways

See that they are kept clean. Do not allow employees to run on them. Tools and material should be kept off. Design should be wide enough to take flow from all doors during emergency.

## [fol. 694] Warehousing and Stock

1. No operations in which hazardous materials are involved, other than operations incident to storage, will be permitted in any storage building.
2. Containers of hazardous materials, and other heavy objects must be lifted or wheeled and not dragged, dropped, or thrown about in operating buildings.
3. Keep aisles open, lighted, and well marked.
4. Do not tier too high for safe handling.
5. Use ladders when climbing, not a series of boxes or bags.
6. Watch floor over-loading; it occurs more often in warehouses and stock rooms than in any other area. Wall signs are marked for maximum safe loading.
7. Use specially designed racks for storage of barrels, piping, steel bars, etc.
8. Use dunnage and tie in layers.
9. Watch for strains; know how to lift safely. Use equipment for heavy loads. Get help for medium loads.

10. Good housekeeping is a necessity for safe operations. Provide efficient floor layout, avoiding sharp blind corners. Keep floors and equipment in good repair. Report defective items.

11. Know where fire extinguishers are, and keep access to them clear. Other aisles should provide quick access to trouble in any area.

12. Guard windows, shaftways, etc. where exposed, on platforms, stairways, etc.

[fol. 695]

### Floor Loads

1. Permissible maximum floor load is marked on each floor of every building. Keep your stock and machinery under this amount. This refers to *distributed* live loads in excess of floor weight. Do not think you can concentrate a load, for instance, of 10 tons in an area 10 ft. square on a floor marked for 200 lb. per sq. ft., just because the surrounding area is unloaded. Use planking or other means to distribute the load. (Important in the case of safes, isolated machinery, and stock piles.) When in doubt, ask help of Safety Engineer. Some floors can be strengthened. Others will weaken with time and deterioration.

2. Vibration affects the floor loads. Figures marked are for static loads unless otherwise indicated. The factor of safety has to be increased in floors designed to carry vibration. In general, forget vibration unless it can be distinctly felt under foot. Some vibration can be lessened. Special floor design and foundation will be provided where necessary.

3. If same material is continuously used in the same area, mark horizontal lines on wall or column to show height giving this weight. If you do not know the weight of the material, consult an authoritative handbook or ask the Safety Engineer.

4. Inspect yearly for indications of weakness such as dry rot, rusting, corrosion (especially near acids).

[fol. 696] 5. Whatever is hanging on the ceiling below your floor (shafting, heavy fixtures, etc.) is part of your load—do not over-look it.

[fol. 697]

### Ladders.

1. Ladders present one of the greatest hazards—and their use is the cause of many serious accidents.

a. All ladders and similar related equipment will be purchased and delivered in the unpainted condition. After inspection for knots, checks and cracks, they will be stenciled for department, specific use, and other identifying information, and then painted with two or more coats of linseed oil.

b. All repairs to ladders and related equipment will be so made as to place the ladders in their original condition as nearly as possible. Improvised ladders and improvised repairs are prohibited.

c. All platform and step ladders will be so constructed as to permit the tightening up of side rails and treads by suitable means originally incorporated in the ladder design.

d. Extension ladders will be used as extension ladders and not as two or more single ladders.

e. Frequent inspection will be made of all ladders and ladder equipment, both as to condition and as to utilization.

f. Where portable ladders are used regularly and often for the same operation, they will be replaced by permanent ladders.

g. [Portable] ladders will be equipped with nonslip [fol. 698] ladder shoes, bracings, cleats, or will be planted in the ground, or held by an employee.

2. Steepness should be about 1 in 4 (a 12 ft. ladder leaning 3 ft., for instance), with a maximum of 1 in 6 (leaning 6 ft.) and a minimum of 1 in 2 (leaning 2 ft.). For cases of slopes lower than the minimum, use steps or stairs.

3. For vertical fixed ladders, use cage guards, when over 20 ft. high.

4. Temporary ladders made up on the premises will be done by qualified carpenter's using rigidly inspected materials. A sample design for a length of 14 ft. would be: rails 2x4, cleats  $\frac{7}{8}$ x3, step distance 12" (never over 14"), inside bottom width 21", top 18". For other ladder lengths these measurements would vary. Cleats should be preferably housed  $\frac{1}{2}$ " into side rails; otherwise use minimum of 3 nails in each end. Use care in storage. Inspect for defects. Use transparent protective coating such as oil. Identify by shop symbol. Hang to avoid sagging. Protect from weather.

5. Minimum clearance around portable ladders should be: Front 30", side 15", back 8". Fixed ladders: Front 24", side 12", back 6".

6. Face the ladder while climbing. Use both hands.

7. Do not misuse a ladder, such as using it for a foot bridge.

8. Do not rest ladder against moving shafting.

[fol. 699] 9. Do not leave tools or material on step ladder.

10. Use ladder long enough to extend  $3\frac{1}{2}$  ft. above landing.

11. Landings shall not be over 16 ft. apart.

12. If longer than 10 ft. the ladder must be held at the base by an attendant.

13. Guard against sudden opening of any nearby door, or passing of other employees.

#### [fol. 700] Stairs.

1. The worst stair accidents occur because:
  - a. There is material left on them or
  - b. They are dirty or slippery.

Other causes to watch:

- c. Poor lighting (should be over 1 foot-candle.)
- d. Haste and running.
- e. Poor maintenance (worn treads, etc.).
- f. Poor design (no handrails, etc.).

2. Use tread design which does not allow slipping. Several types available for various shop operations.

3. Pitch of stairs should not be too steep. Normal pitch is about  $35^{\circ}$  from horizontal, varying between  $20^{\circ}$  and  $50^{\circ}$ . Below this limit, use a ramp; above it, use a ladder.

4. The preferred ramp slope is about  $7^{\circ}$ . Avoid slipperiness by design and maintenance.

5. Three rules of thumb are used on proportioning tread to riser (nosing of tread not included):

a. Tread plus riser equal  $17\frac{1}{2}$  to 18

b. Tread plus 2 times riser equal 25

c. Tread times riser equal 70 to 75

6. Risers—maximum 7", minimum 5" treads—maximum 16", minimum [10']. Keep width 44" or more where possible, and never under 22".

7. Any set of steps having over 3 treads should be provided with a handrail on one side. Longer flights should have either one or two rails, depending upon exposure. [fol. 701] Use intermediate landings on long stairways—usually over 14 ft. high.

8. For width of 44" or less, 1 handrail.

For width of 44" to 88"—two handrails.

For width over 88"—three handrails. (one in center)

9. Protect any adjoining windows by suitable guards.

10. Replace wood treads when badly worn.

[fol. 702] Platforms and Runways.

1. Platforms or runways are required wherever employees are required to go into places where injury may result from falls or from contact with moving machinery or other objects.

2. For platforms over 30 ft. long or 250 sq. ft. in area, use two stairways or ladders.

3. Adjoining tanks, the platforms should be 42" below top edge of tank—as in handrails. Minimum height allowed 36"; above this use additional railing or toe boards.

4. Use toe boards 6" high at edges of all elevated walkways or platforms where there is exposure to men below by materials falling off the flooring. In severe cases, use wire mesh full width between handrail and toe board.

5. Do not jump from loading platforms to ground; use steps. A man's foot is not designed for jumping.

6. Minimum width of temporary runways should vary according to height:

0-30"	— 1 2 x 10 plank (9½")
30" - 5 ft.	— 2 " " " (17")
5 ft. over	— 3 " " " (28")

Provide guard rails for last two items. Provide toe boards for heights over 7 ft. if there is exposure to men below.

[fol. 703]

### Railings.

1. The standard height of handrails is 42" above floor level, and when on stairways at 36" above center of tread. New railings should be built with this in mind. Special cases will be treated as they arise.

2. Use only first-class material and build strong enough to hold a man's weight if he has to suddenly throw it against the railing.

3. Keep railings well maintained and secure. It is better to have no handrail at all than one which cannot be depended upon when needed. Should withstand 200 lb. in any direction with factor of safety of 5.

4. Removable or hinged railings are acceptable where necessary for operations. Keep in place when not in use.

5. Use metal railings where practical (minimum diameter 1½"—use 2" if available).

6. Spacing of supporting posts must not be over 8 ft.

7. Add toe board where needed—see walkways.

8. Intermediate railing between top rail and floor or steps shall be considered individually.

9. Some detail drawings of railings available for reference.

10. Minimum distance between handrails 66". Newels at end of any center handrail 6 ft. high.

[fol. 704] Floor Openings—Shaftways.

**(Temporary or Permanent.)**

1. All floor openings, excavations and shaftways must be adequately guarded by temporary handrails, or sheeting. Also provide toe boards if men are exposed below.
  2. Where practical, cover with planking. Arrange by cleating or other device to avoid shifting.
  3. Hatchway openings with hinged covers are acceptable if strong enough to hold load when closed. Provide guard when open. Chamfer top edges 30 degrees if over 1" above floor level.
  4. Manhole openings must be guarded by barricade and by another employee.
  5. Manhole covers must be able to take load of 5 tons if in roadway.
  6. Excavations for foundations or trenches shall be guarded in same manner as floor openings.
  7. Wall openings will be considered same as floor openings, when lower edge is within 3" of floor, especially if adjoining area drops 5 ft. or more. Openings higher up in wall will be protected when stock is piled nearby and in danger of falling through.

[fol. 705]

## Scaffolds.

1. This is the most fertile field for serious construction injuries. It covers all types of scaffolds—including single pole, suspended, painters, boatswain, carpenters bracket, bricklayers [square], outrigger, needle beam, ladder, horse and window jack.
  2. Most important consideration is to select only first class material rigidly inspected.
  3. Never allow a scaffold to be used without the approval of a qualified carpenter or engineer. Makeshift scaffolds—because “it will only take a minute”—have been the cause of many accidents.

4. Factor of safety on lumber—4.

Factor of safety on steel cable—8.

5. Provide 2 x 4 guard rails and 6 inch toe boards where possible.

6. Size of nails—minimum, 10 penny driven full length. (For 88 lb. lateral resistance; 12d for 98 lb.; 16d for 130 lb.)

7. Workmen crawling out on projecting beams or thrust-outs will wear safety belts. Maximum projection—6 ft.

8. Cross brace all pole scaffolds, and tie into building.

9. Watch overloading and accumulation of materials on scaffolds. Maintain good housekeeping.

10. When using ropes, protect loose end on ground, as in coiling in barrel. Keep away from chemicals and acids.

11. Watch for exposure below, particularly if personnel walk underneath. Use catch scaffolds.

[fol. 706] 12. Suspension scaffolds will be shifted only by the builder who is responsible for them.

13. When using horse scaffolds, give particular attention to supports. Never use temporary blocking under legs. When tiering is necessary, use only 2 tiers high, placing horses above each other.

14. In presence of considerable wood scaffolding, provide means of fighting any outbreak of fire (such as stand-pipes).

15. On needle beams—min. rope diam. will be 1 inch and not less than  $\frac{1}{4}$  foot from end of beam.

16. Scaffold material which is to be re-used, as in painters scaffolds, will not be painted. Treat as in ladders.

17. Upright splicing should be at least 4 ft. long, used on two adjacent sides.

18. Safe loads for Spruce or Norway Pine. Total uniformly distributed loads:

Span	2x10	2x12	3x8
6 ft.	256	309	526
10 ft.	153	186	316
14 ft.	110	133	225

19. For safe center concentrated loads, lower values must be taken.

20. Do not use boxes, barrels or loose lumber for supports.

21. Design should support for:

Stone masons .....	75 lbs. per sq. ft.
Bricklayers .....	50 " " " "
Carpenters, Painters .....	20 " " " "
Lathers & Plasterers.....	30 " " " "

[fol. 707]

### Tunnels.

1. Whenever tunnels are used for pipes or passageways they must be provided with a sufficient number of exits. They must be well lighted, drained, and ventilated. Live steam lines in tunnels must be installed with care; they must be well anchored and have necessary provision for expansion and contraction.

2. No one without authority will be allowed in these tunnels.

3. Inspect daily, and be on the alert daily for suspicious actions or conditions.

4. Keep tunnels clean and sanitary and well maintained.

[fol. 708]

### Flooring.

1. All floors must be marked for permissible maximum floor loads.

2. Keep clean all floors under your charge. Avoid spillage. Acids on wood floors rots the fibers. Oil is slippery and a fire hazard.

3. Special safety floor design is available to prevent slippage. Compounds of paint or powder can also be applied. Special floor mats for men standing at machines are available.

[fol. 709]

## Roofs.

1. When necessary to go onto roof, wear safety gripping shoes. Men working on steep roofs (over  $30^{\circ}$ ) should wear safety belt with rope attached to chimney or other fixed point.
2. Roofing devices used, such as shingling footlocks, to be of 2 x 4 timber, secured by metal strip [st] least 4 inches wide. "Chicken ladders" can be used with hooks or belts to catch over ridge pole. Cleats to be 2 x 1 and project about  $2\frac{1}{2}$  inches on each side.
3. Minimum strength of roofs should be:
  - For slopes, 4" per ft. or less—30 lb. per sq. ft.
  - For slopes 4" per ft. to 12" per ft.—20 lb. per sq. ft. horizontal projection.
  - For slopes over 12" per ft. consider wind force of 20 lb. per sq. ft. normal to roof.
4. Normal design factors are based on:
 

1. Slope	4. Maintenance	7. Construction-
2. Durability.	5. Fire	type-fastenings,
3. Cost	6. Weight	8. Appearance
5. Do not install penthouses, water tanks, supply bins, etc. on roof without specific approval.
6. Keep in repair and report any loose or leaky sections. Lightning rods should be kept secured and not allowed to whip around on roof. Eliminate as soon as possible overhanging roofs, cornices, weak skylights, unnecessary gutters, etc.

[fol. 710]

## Carpentry

1. Most important item for this activity is scaffolding. All supports must be solid, and woodwork approved by a competent foreman. Use only best of material.
2. Use both hands in climbing ladders. Use hand lines for tools or material.
3. Keep debris cleaned up, and materials stacked neatly.

4. Use lights around construction and excavations for protection of work at night.
5. Barricade all excavations.
6. Ground all portable electric equipment.
7. Wear safe clothing, safety shoes with thick soles, trousers without cuffs, etc..
8. If working near welders, protect eyes from "flashes."
9. Do not carry nails in mouth.
10. Do not leave tools in exposed overhead positions where they can fall on employees.

[fol. 711]                          Plumbing.

1. Piping will be identified in accord with a standard system, to avoid accidental contact or use of dangerous materials.
2. Care must be used in laying outside piping below frost line, unless lines are in service tunnels. Protection must also be given when passage is beneath structure walk carrying superimposed lead.
3. Men handling plumbing equipment and material should wear protective clothing such as safety shoes, and gloves. Torn or loose clothing should not be worn. Do not wear cuffs on trousers.
4. All tools must be maintained in good repair and inspected for defects before issuing to each shift.
5. Special care must be exercised on repairs to acid and caustic liquid lines. First drain, blow down with compressed air, and keep free from pressure. Disconnect plumbing.
6. Piping and fittings must be stored neatly in racks or bins.
7. Housekeeping is an important safety precaution, both in shop and around job. Many accidents are caused by strewn pipe sections. Keep wrenches and tools off overhead structures and stepladders. Provide adequate illumination.

[fol. 712]

## Painting.

1. In storing paint stocks and thinners keep them tightly closed, away from heat, sun rays or fire exposure. Provide natural ventilation in room used for stocks.
2. A fertile source of lead poisoning is the habit painters have of absorbing paint through the mouth in small quantities—(wiping mouth with sleeve, using paint-soiled handkerchief, eating lunch without washing hands, etc.).
3. Painters' scaffolding needs special attention. Keep paint off so that cracks can be detected. Use oil, varnish or shellac for preservative.
4. Watch out for exposure to other employees below or nearby.
5. Select safe scaffolding. Store in protected position.
6. Examine all ropes, rigging and equipment before use.

[fol. 713]

## Elevators.

1. Carry capacity must be posted at all entrances to the elevators and in the elevator.
2. Elevators must be of a safety type with safety catches, automatic limit stops, and emergency exits. The gate or door must be guarded securely by approved gates and hatchways. Gates or doors must be arranged so that the elevator will not start until the gate or door to the elevator has been closed. Devices giving equal security are acceptable.
3. Electrical power and lighting installations will be in accordance with Standard Safety provisions.
4. Attention to the following details will be given: Car covering, lighting pit cleanliness, doors and gates, counterweights, cable wear, cotter pins, governor and cable-safety control, penthouses, brakes, machine guards, emergency signals, limit stops, interlocks, cable sockets, lubrication, grounding of machine frames, landings.
5. Operation. This is especially important in view of the difficulty in obtaining repair material.

- a. Do not operate elevator for passenger service.
- b. Do not operate elevator with hatchway doors open.
- c. Do not overload elevator.
- d. Always stop car at floor level.
- e. Do not tamper with doors or locks to prevent automatic operation.
- f. Do not tamper with mechanical or electrical parts of elevator.
- [fol. 714] g. Elevator hatchway doors are to be opened only by operator.
- h. Do not drag heavy loads on or off elevator.
- i. Always use rollers under machine skids or heavy loads and always use trucking plates from floor to car.
- j. If car top is removed to carry temporary loads, it must be replaced as soon as car is unloaded.
- 6. Any unusual hazards which may affect the safety of personnel around or in the elevator should be reported to the Safety Engineer.

[fol. 715] **Safety Glasses.**

All persons who work in production areas must wear safety glasses at all times that they are on duty. Glasses can be procured at the Safety Store where they will be issued and fitted to the individual.

The employee who wears prescription lenses, must at his own expense purchase safety glasses with lenses ground to fit his needs. The glasses must be of the same type and construction as the glasses that are issued to other employees. The prescription glasses will be procured from the optometrist in the Safety Store.

Celluloid eye shades worn as part of a cap or separately are prohibited. They are dangerous because of their high inflammability.

Should the job entail any unusual hazard, personal protective equipment designed to safeguard the worker will be advised of such condition by his supervisor.

[fol. 716] Hand Tools.

1. Use safety tools in dangerous atmospheres. These are of various types, but all non-sparking.
2. Poor maintenance of hand tools is a chief reason for accidents.
3. Inspect for:
  - a. Mushroom heads
  - b. Loose or broken handles
  - c. Greasiness or dirtiness
  - d. Sprung frames
  - e. Files without handles
  - f. Screwdrivers with badly worn points
  - g. Misuse of wrenches, incl. posture
  - h. Eye protection when chipping
  - i. Unsafe carrying practices.
4. Good housekeeping is essential.
  - a. Do not leave tools scattered about on floor.
  - b. Store in safe position when through using.
  - c. Keep them off stepladders.
  - d. Keep them clean.
5. When issued, a man who accepts hand tools is responsible for their maintenance. When turning them in, report hazards.
6. Ground all portable electric power tools.

[fol. 717] Wire Ropes and Slings.

1. A wire rope should be considered as a machine, with different designs for different purposes. Six grades of steel are used for the wires laid in varying designs. An inner core is added and serves for internal lubrication. This is for permanent use. Outside lubrication is added periodically.
2. Unroll carefully to avoid kinks, preferably by rolling the reel or coil as a hoop, or better still by pulling off wire

from reel suspended to turn freely. Kinks may straighten out but hidden damage is done to rope. To recoil use similar method.

3. Handling. Damaging actions to rope are jerking (sudden starts and stops), slipping, vibration, lashing. Avoid them.

#### 4. Care. Keep clean and lubricated.

5. Ropes left idle and uncared for usually deteriorate faster than if they were in service. Reel it up, lubricate it, keep clean, and under cover.

6. Chains, hooks, slings and ropes must be inspected regularly.

7. Consider the rope normally unsafe when 10% of the wires are broken, in length of 8 diameters.

or—3 broken wires in one lay of 6 x 7  
 6 " " " " " " 6 x 19  
 9 " " " " " " 6 x 37  
 8 " " " " " " 8 x 19

[fol. 718] 8. Strength. A 5/8" plow steel rope type 6 x 19 with fibre core, has 114 wires of approximately diameter .04. Taking ultimate tension of 28,100 lbs, with factor of safety of 5 this would be 5,620 lbs, working load. Other safe working loads are:

Nominal Diameter in Inches	Safe Working Loads			
	Iron	Cast Steel	Plow Steel	Plow Steel Improved
1/4		820	9.5	1130
5/8	800	4750	2140	2460
1/2	1390	3000	3650	4225
5/8	2150	4600	5625	6475
1	5350	11500	14250	16375

9. Crosby clips. Use 2 for 1/4" rope, 3 for 1/2", always place U side on loose end, and nut side on main line.

10. Slings. Use thimbles where practical to avoid severe wear. Thimbles are available which allow one end of sling

to slip through the other end; strength of sling depends on position. Hung vertically under load, it develops full tensile strength. The greater the horizontal angle, the more load can be carried.

A 2000 lbs. object picked up by sling would exert:

at 90 degrees from horizontal—1000 lbs. each leg.

60	"	"	—1155	"	"	"
45	"	"	—1414	"	"	"
30	"	"	—2000	"	"	"
15	"	"	—3864	"	"	"

[fol. 719] Hence, fasten sling as near 60 degrees as practical, otherwise safe working strength of rope may be exceeded. Especially important on worn slings, roughly used.

11. Socketing. Use molten zinc at 750 degrees to 850° F. After spreading wires, cutting core, and cleaning (with gasoline, then dipped into acid). Top of strands at level of socket basket. [Babbitt] not considered as good as zinc.

12. Man pouring zinc should wear Safety mask.

13. Sheave drum or pulley diameter varies, to meet diameter of rope.

For 6 x 19 type:

Rope Diameter	Rec.	Absolute Min. Drum Diameter
1/4	12	7 1/2
3/8	17	11 1/4
1/2	23	15
5/8	28	18 3/4
1	45	30

14. For 6 x 7 use 36 diameter of rope,

6 x 37 "	16	"	"
" 8 x 19 "	20	"	"

## [fol. 720] Hemp and Sisal Rope.

## 1. Safe loads—New Manila Hemp Rope.

	Diameter—Inches				
	$\frac{1}{4}$	$\frac{1}{2}$	$\frac{3}{4}$	1	2

(Factor Safety 5) . . .	120	530	1080	1800	6200 lbs.
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(Factor Safety 6) . . .	116	480	816	1366	5165 lbs.
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## 2. On old hemp rope use factor of Safety of 10.

3. Inspect severely before each use; something may have happened to it while you were absent. A life may depend on this inspection.

4. Pulley diameter should never be below 9 times diameter of rope.

5. Avoid kinking as in "Wire Ropes", item number 2, p. 44. Store hemp rope where dry and free from damaging agents or deteriorating atmosphere.

6. Due to shortage of hemp, Sisal is being substituted. This is not as strong. With factor of safety of 5, compare with #1 above:

$\frac{1}{4}$	$\frac{1}{2}$	$\frac{3}{4}$	1	2
96	424	864	1440	4960

## [fol. 721] Hoists and Cranes.

1. A capacity plate showing capacity of hoists in pounds or tons must be posted in a protected and [conspicuous] place on each crane. The plate must show the lift capacity of the hoist or crane under varying conditions.

2. Parts of lifts and fastenings must be inspected weekly.

3. Normal factor of safety on parts of hoisting equipment.

Cast Iron . . . . .	12
" Steel . . . . .	8
Structural Steel . . . . .	5
Forge Steel . . . . .	5
Cables . . . . .	5.

4. All electric power equipment frames should be grounded.

5. Keep lighted at night, both for operator and nearby workmen.

#### 6. Chain Wear--Permissible Link Wear:

Original Diameter	Worn Diameter
$\frac{3}{8}$	$19/64$
$\frac{1}{2}$	$3/8$
$\frac{5}{8}$	$15/32$
$\frac{3}{4}$	$37/64$
$\frac{7}{8}$	$43/64$
1	$49/64$

7. Diameter of sheave size should be 25-30 times diameter original link diameter, i. e.:  $\frac{1}{2}$ " link above requires 13 to 15 inch drum.

8. Avoid chain kinks as in "Wire rope."

[fol. 722] 9. Safe loads for chains—(Factor Safety— $3\frac{1}{2}$ ).

Diam. Link Stock	Load Vertical	at $60^\circ$	at $45^\circ$
$\frac{1}{4}$	1060	917	750
$\frac{3}{8}$	2385	2065	1685
$\frac{1}{2}$	4240	3673	3000
$\frac{5}{8}$	6630	5743	4687
$\frac{3}{4}$	9540	8263	6750

Note changes in strength due to angle with horizontal.  
See Wire & Hemp Ropes and Slings.

10. Store away from corrosive fumes. Oil sheave chains, but do not oil sling chains.

#### 11. Hook sizes:

Chain Size	Sling Hooks	Grab Hooks
$\frac{3}{8}$	$3\frac{3}{4}$	$2\frac{13}{16}$
$\frac{1}{2}$	$5\frac{1}{2}$	4
$\frac{3}{4}$	$8\frac{1}{2}$	$5\frac{3}{4}$
1	$10\frac{1}{8}$	8

(This is vertical distance between top of eye and top of curved seat.)

12. Only experienced blacksmiths with full knowledge of annealing should be allowed to repair chains and hooks.

13. Signals should be given only by appointed employee who understands the hazards involved, and knows the accepted standard signals. Crane operator should not recognize signals from any other person.

14. Pick up loads gradually and avoid all jerky or sudden movements. [fol. 723] See that others are out of way before swinging loads. Do not operate over heads of workmen.

15. Protect rear and side of cranes, so that other employees or public will not be exposed.

16. Protect all gears and moving machinery.

17. No person is allowed to "ride the load" of any crane or hoist.

18. Traveling cranes should have a warning signal—either manual or automatic. Where rails and wheels are exposed to men a fender guard should be provided to push away part of body exposed.

19. Access ladders and walks to traveling cranes should be provided and well maintained. Descent from cabs should not be by any other means.

[fol. 724].

### Machinery

Basically, the machines used in the manufacture of small arms ammunition are of two types, presses and lathes. The safety rules given under these two headings are applicable to all machine tools used in the manufacturing processes.

#### Lathes

1. These include lathes, milling machines, shapers, planers, borers, broachers, gear cutters, threaders.

2. Keep all safety devices in place, and in repair. Gears and belt drives should be protected if not already done by manufacturer.

3. Keep floors clean and lighting good.
  4. Cover cutting oil system keep it clean—see “Dermatitis.”
  5. Pull long chips from cutting tool with special hand tool or stick—do not use hands.
  6. Provide exhaust ventilation for metal dust, such as milling machines sanders.
  7. Protect cutters on milling machines, to keep fingers away.
    - a. Protect planer bed against shear between carriage and bed.
    - b. Guard all planer bed openings under 7 ft.
  8. Minimum space at end of shaper ram 24" to protect men from being struck.
  9. Don't oil or clean moving parts, or ride on machine while in motion.
- [fol. 725] 10. Warning! Check machine for speed before starting work. Last man on it may have left it at high speed.

### Power Presses

1. Accepted types of guards to keep operators away from point of operation, in order of preference:
  - a. Automatic feed, various designs
  - b. Rotary Feed
  - c. Fixed enclosure
  - d. Two hand tripping device
  - e. Sweep guards
  - f. Wrist harness
2. Guard treads to avoid accidental tripping.
3. Housekeeping [importing] — especially light aisles, neatness, floors and rooms. Special foundations necessary for presses. Don't place on old flooring.
4. Emergency disconnect switch necessary on power presses—near operator.

5. Limit established for clearance of guard stroke of ram, etc. is  $\frac{3}{8}$ ".
6. Use non-repeat attachment on presses offering exposure from stroke repetition.
7. For blocking up ram head, never use less than 4 x 4 hard wood with protected ends. A  $2\frac{1}{2}$ " pipe o. k. if flanged. Report all cases needing adjustment or maintenance at once. An undependable guard is dangerous.

[fol. 726] Machine & Transmission Guards

*Metal Working*

1. All moving parts of machines which are at level of operator and offer possibilities of injury should be covered or protected.
2. Belts and pulleys over  $1\frac{1}{2}$ " in width should be guarded to height of 6 ft. above floor. Use  $\frac{1}{2}$ " mesh (max.) wire if belt clearance is under 4", otherwise 2" mesh.
3. Gears are especially important and must be completely guarded. Includes sprocket chain.
4. Watch for projections on shafting. A [guard] if redesigned is impractical. (Keys, set screws, couplings, nuts, etc.)
5. Provide emergency stop switch near operator.
6. Floor shafting must be covered by fixed guards, with minimum of 2" clearance, (includes under bench machines).
7. Overhead (ceiling) belts need protection only when,
  - a. They are overpassageways and move over 1800 ft. p. m.;
  - b. Span between pulleys is over 10 ft;
  - c. Belt is over 8" wide.
8. Maintain guards in good repair. A guard may offer increased hazards if not kept adjusted, and well maintained.
9. Stop machinery before oiling, adjusting or repairing.

10. Both hot and cold metal saws should have a guard at least to the depth of teeth. Portion of saw under table also to be guarded.

[fol. 727] 11. While working on machinery, lock open switch or hang sign on it.

### *Wood Working*

1. Band saws—including metal working. Cover entire length except few inches directly above plane of operation. Use sliding guard when necessary to work heavy material.
2. Circular saws are designed for a definite safe speed. Don't exceed it or it may fly apart. Same behavior for abrasive wheels. Report cracks.
3. Both rip and cross-cut saws to be provided with hood reaching at least to depth of teeth. Also under bench.
4. On rip saws provide non-kick-back device.
5. Jointers must not have square heads, but cylindrical heads only. Use guard on table.
6. Sanding machines to be guarded except for area in use. Drums, disc, belt types.
7. Provide efficient exhaust system for wooddust chips.
8. Nailing machines must have safety housing and safety stop devices.
9. Daily on beginning work employees must inspect the machinery under their charge. Employees will be responsible for the safe operation of their machines.
10. Special machinery will have guards to meet conditions (tetoner, boring mach., shaper, [motiser,] lathe, jointer, molding, etc.).

[fol. 728] 11. Keep floor around machines clean and free of debris. Watch for fire hazards.

12. Mechanical guards, railings, ladders, or safety appliances of any other kind will not be removed by employees except for repairs or cleaning. Machines will not be used until such safety equipment has been replaced.

13. After repairs have been made to machinery or equipment, it must be tested thoroughly and all safety appliances replaced before operations are resumed.

[fol. 729]

### Abrasive Wheels

(Under 6" Diam.)

1. Keep guards, hoods and shields on them. Keep these clean and in repair. Maximum exposure should be 90° of arc, on bench and floor stands; 125° allowed when necessary to contact with wheel below horizontal.

2. Do not operate at a speed higher than that marked on wheel. Compare with R. P. M. motor rating.

"The force that tends to rupture a given wheel when overspeeding increases as the square of the velocity of that wheel; for example, the centrifugal force in a wheel running at 5,500 surface feet per [mitute] is 49 percent greater than in the same wheel running at 4,500 surface feet per minute although the speed is actually only 22 percent greater".

3. Maximum limits of surface speed allowed to avoid rupture mentioned in Item #2 are based on R. P. M. and design of wheel. For above surface speed of 5,500 ft. per minute, a 6" wheel would turn at the rate of 3,500 R. P. M. This would safely be met by such wheels as types 1, 4, 5, and 7; and by types 2, 6, 11, 12, 13, except for the soft vitrified and silicate bonds.

4. Keep tool rests adjusted close to periphery of wheel, preferably  $\frac{1}{8}$ ".

[fol. 730]

### Abrasive Wheels

(Over 6" Diam.)

1. Keep guards, hoods and shields on them. Keep these clean and in repair. Maximum exposure should be 90° allowed when necessary to contact with wheel below horizontal.

2. Do not operate at a speed higher than that marked on wheel. Compare with R. P. M. motor rating.

"The force that tends to rupture a given wheel when overspeeding increases as the square of the velocity of that wheel. For example, the centrifugal force in a wheel running at 5,500 surface feet per minute, although the speed is actually only 22 percent greater."

3. Maximum limits of surface speed allowed to avoid rupture mentioned in Item #2, are based on R. P. M. and design of wheel. For above surface speed of 5,500 ft. per minute, a 6" wheel would turn at the rate of 3,500 R. P. M. This would safely be met by such wheels as types 1, 4, 5, and 7; and by types 2, 6, 11, 12, 13, except for the soft vitrified and silicate bonds.
4. Keep tool rests adjusted close to periphery of wheel, preferably  $\frac{1}{8}$ ".
5. Use safety flanges. There is a designated size for each wheel diameter, starting at 6".
6. Maintain proper relationship between the size of spindle and size of wheel.
7. Use exhaust connection for buffing and for materials causing dust suspension.

[fol. 731]

### Sheet Metal.

1. Metal shears are the worst hazard in this trade. Guards are possible—fixed across front of blade, under which material is fed. When 2nd worker is present at machine, watch danger of tripping the shears with 1st man exposed.
2. Heavy gloves must be worn when handling sheet metal. Shoes should be high-cut, heavy soles.
3. Avoid loose clothing around machinery.
4. Shield men from welding operations.
5. Use compressed air with care. Do not use for cleaning clothes.
6. Inspect tools for defects. Electric drills must be grounded.

7. Provide adequate lighting and good housekeeping. Leave aisles open and clear. Avoid congestion of workers.
8. Use power equipment to handle heavy plates, instead of personnel.
9. Protect all parts of moving machinery.

[fol. 732] Pressure Vessels and Equipment.

1. This includes boilers, air receivers, gas cylinders, compressors, refrigerators and hot water tanks.
2. Basic design and construction to be according to A. S. M. E. code and A. S. A. Also all necessary operation, maintenance and repairs.
3. Boilers to be inspected internally biannually.
4. Hydrostatic tests do not constitute such an inspection. Such are to be carried out only when specifically directed. Pressure to be 150% maximum working pressure when such tests are run.
5. Pressure gage dials should read to twice the pressure at which safety valve is set.
6. No valve allowed between pressure vessel and safety valve.
7. Hot water boilers need safety valves. (Several explosive results indicated in Safety file.) Test periodically and keep clean.
8. Drain off water condensation from all air receivers yearly before cold weather. More frequent intervals (monthly) will help maintain full air volume.
9. Guard all moving parts, such as belts, to air compressor motor.
10. Due to high temperature caused in air tanks under high compression, select oil which does not readily decompose. (100 lbs. per sq. in. can build up temperature of 480 F.)
11. Watch for clean air intake. Especially important are fumes or gases. Watch for possible explosions from oxidation of oils drawn into tank. Use air filter.

12. Air driven tools shall be guarded to avoid sudden accidental operation of trigger. Also use tool retainer on power tools.

13. No repairs are to be made on air driven tools until they are disconnected or line valve closed.

14. Gas cylinders must be secured in upright position, to avoid falling and damaging valve stem.

15. Keep oil away from valves. Oxidation with oxygen can cause fire. Never lubricate. If not vertical, acetone may be drawn out (acetylene is pumped into liquid acetone).

16. Never force connections which do not fit properly. When necessary to test for leaks, use soap suds. Keep cylinders away from open flames.

[fol. 734]

### Welding.

1. Operators must use helmets and goggles to protect eyes. Others nearby, if exposed, will probably get "eye flash" or conjunctivitis; therefore, protect work and arc with screens. Do not watch workmen; guard your eyes.

2. Welding glass shades:

- No. 3 occasional observation & brazing
- " 4 light acetylene welding
- " 5 for light spot welding
- " 6 & 7 for arc welding to 30 amps
- " 8 for arc welding to 75 amps
- " 10 for arc welding to 200 amps
- " 12 for arc welding to 400 amps
- " 14 for arc welding over 400 amps

3. Wear clear goggles under shield (after flame is cut off, cooling of metal causes scale to fly).

4. Wear protective clothing—gloves, apron, and high safety shoes.

5. Maintain good housekeeping in area. Keep tools in place, and parts away from aisles. Welding cables should be dry, free from grease, and protected against damage.

6. Handle equipment with care. Use only standard manifolds, hoses, and torches. Maintain good order.

7. Never put down a torch until gas supply has been shut off.

[fol. 735] 8. Disconnect all power lines from equipment when not in use.

9. Installation of equipment and circuits should be according to National Electrical Code.

10. Keep away from all combustible or explosive materials. Remember the Normandie.

11. Ventilate, if working indoors; fumes given off vary in toxicity according to fluxes, rods, metal, etc. Some of it is carbon monoxide or nitrous oxide.

12. Do not touch material being welded—it usually carries high amperage current.

13. One man on each shift of welding crew should know emergency artificial respiration.

14. Repairing of gasoline tanks and receptacles having held inflammable liquids is of greatest danger. See Safety Engineer before proceeding.

15. Warning: No welding is to be done inside any shop or building not specifically authorized and laid out for this work, unless a permit to do such work is obtained from the Safety Department.

[fol. 736]              Motors & Electric Power.

1. Electric power & light (1) Electric motors will not be located in rooms or buildings containing explosives, dust from inflammable vapors or dust which may form explosive or inflammable mixtures with air unless such use is given specific approval by the Safety Department. Motors normally should be located outside of buildings containing these substances with no connection to the process building except through mechanical power transmission and control devices which pass through glands

or apertures adequately sealed against egress of the hazardous material in the building.

2. All control boards and switch panels and transformers should be guarded at all times. For temporary use a wood grillage or fence is acceptable. Do not let employees hang clothes in this area or go near it. Permanent enclosures should have lock with key in possession of responsible party.

3. All frames must be grounded—(size of wires).

Fuze cut out	Ground wire—copper
200-500 Amps.	4 A. W. G.
100-200 Amps.	6
30-100 "	10
10-30 "	14

Protect and inspect ground wire connections.

4. Portable electric tools should be grounded, as provided by 3rd prong at end of cable. (Size—No. 18 wire with 10 amp. fuze on wall). Provide convenient [fol. 737] Clamp attachment at wall socket for this connection. Use of conduit acceptable.

5. To avoid enclosure guarding of main wires keep at elevation above floor or ground.

Voltage	Elevation
300 —	750
750 —	2500
2500 —	7500
7500 —	30,000
30,000 —	70,000
70,000 —	100,000
Over 100,000	14.0

6. Never direct a solid stream of water against a power line; you will probably be electrocuted.

7. Do not fool with any equipment getting out of order. All repairs and adjustments should be done by competent electricians. Lock switches during repairs and give key to man working on lines.

8. Allowable carrying capacities of wire in amperes.  
(Use fuses and cut-outs to avoid overloading.)

Size A. W. G.	Rubber Insulation	Cambrick Insulation
18	3	..
14	15	18
10	25	30
6	50	60
3	80	95
1	100	120
00	150	180
0000	225	270

9. Know artificial respiration for severely shocked men.

[fol. 738]

### Lightning Rods.

1. Several experimenters have tried to find relationship between height of lightning rod and area of protection. One showed that a rod 1.1% of height of cloud shelters a radius 4 times rod height. Another showed there was a difference depending on charges; with plus charge on rod and minus on cloud, a rod 2.3% cloud height protected an area 12½ times height of rod; when charges were reversed with same rod, an area of but 2½ times rod height was found protected.

2. Ground terminals should be sunk deeply into the earth to wet soil. *All connections from here to roof should be tight and inspected semi-annually.* Air terminals to be of non-corrosive metal. Ground terminals of copper plates, rods or equal. Inspect, especially, point where conductor enters ground—deterioration is rapid here.

3. The system should be tested annually per instructions of the Electrical Department.

[fol. 739]

### Static Electricity.

1. The generation of static can neither be prevented nor is it practicable to attempt to do so. The hazard appears when the static accumulates to the extent that a spark discharge may occur.

2. Static is a more acute hazard in the winter than in the summer months.

3. Processes providing hazardous exposure:

- a. Storage & Handling of Flammable Liquids
- b. Transmission Machinery
- c. Fibres and Dusts
- d. Mixing, Grinding, Screening, Processing of Explosives
- e. Discharge of Gases and Vapors

4. Presence of static can be determined by:

- a. Cotton Thread
- b. Electroscope
- c. "Neon Tester"
- d. Static Voltmeter

5. Humidification is probably the most positive means of preventing accumulations of static electricity, but more dependence is generally placed on grounding. . . . Carbon dioxide content of the air in humidified areas ranks equally in importance with relative humidity, . . . Their investigation indicates that humidification, in itself, is not the complete answer to the problem of the prevention of dangerous accumulations of static electricity. It should not, therefore, be depended upon as a primary means for the elimination of the static hazard.

6. Shoes & floors:—

a. In all cases where there is a static hazard in the maximum allowable resistance between ground and conductive bodies shall not exceed one million ohms.

b. In all cases where there is static hazard, equipment must be grounded, and floors and operators' shoes must be of such type that the sum of the resistances between ground and conductive bodies is less than one million ohms.

c. Shoes with soles of rubber [of] fabric which have a resistance of less than 250,000 ohms when the wearer stands upon electrode and holds the other electrode in his hands, are suitable for universal use.

d. Conductive floors as required in 3b above, must have a resistance of less than 250,000 ohms measured between ground and a 5 lb. electrode, in direct contact with 5 square inches of floor area.

7. Avoid concentration of explosive mixture in air.

8. Every possible source of static sparks, must be thoroughly grounded in a permanent manner

[fol. 741]

### Dusts and Gases.

1. The toxic hazards of dusts, for continual breathing, should be controlled.

#### Maximum Dust Concentration.

Cadmium	0.1 Milligrams per cu. meter
Lead	0.15 " " "
Manganese	50.0 " " "
Mercury	0.1 to 0.2 " " "
Zinc Oxide	15.0 " " "
Silica (over 75% free)	5 million particles per cu. ft.

2. Explosive dusts include:

- a. Carbon—coal, coke, etc.
- b. Food—flour, sugar, starch, powdered milk, grain dust, etc.
- c. Metal—aluminum, magnesium, zinc, iron
- d. Resins, waxes, and soaps
- e. Spices, insecticides
- f. Wood, flour, and dust. Cork, etc.
- g. Sulphur, tobacco, etc.

3. Provide ventilation to control. Inspect rigidly. Repair leaks at once. For exhaust design, consider vapor density.

4. Housekeeping is important. Don't allow accumulation of dusts, or sediment.

[fol. 742]

**Spray Painting.**

1. Greatest hazard is *explosion* and *fire*. Paints with driers are an explosive hazard. In building where paints and oils are used in connection with manufacturing or assembling process, stocks should be a part of the installation. Sprinkler and deluge systems are not recommended, except as a control of secondary fires. Fire-foams, pyrene, carbon dioxide, carbon tetrachloride and treated sawdust, are effective fire extinguishers; water is not effective as an extinguisher.

2. Next hazard is inhalation of *toxic fumes*.

3. Zones for spraying operations must be set aside for this, and designed to avoid the two items above; with attention to ventilation, cleanliness and electric fixtures. Booths must be non-combustible.

4. All spray equipment must be of approved design and layout. Safety valve and pressure gauge included. Keep nozzle pressure as low as practical.

5. Keep booth clean and free from accumulation of paint. Note especially [grill] in front of fan, blades of fan, throat of hood and floor of hood. Spontaneous combustion is possible.

6. Air velocity at booth face should be 200 ft. per min., minimum.

7. Don't blow out booth with jet of compressed air, as this can generate static electricity.

8. Examine dust collection in nearby area; beams, cabinets, sills, etc. Dust explosion possible. Keep clean.

[fol. 743] 9. Isolate operations from rest of plant if possible. Otherwise, partition off this area.

10. No electric fixtures except "Explosion Proof" type should be within 20 ft. of the booth. Use conduits for wiring for distance of 30 ft.

11. Provide safe and adequate storage and mixing of paints, thinner, etc. Limit to 50 gallons per cabinet and 5 gallons per container. Ventilate room; keep it clean.

12. Be careful where exhaust discharges the gases and vapors. Fire and toxic hazards may be created.

13. On outside work or where air currents are not under control, use respirators.

14. Do not eat near booth. Wash hands.

The idea is to *smother* the fire. Avoid fire extinguishers unless specially compounded for this use.

[fol. 744]

### Lead.

1. Poisoning may occur from continuous breathing of dust or fumes. Provide efficient ventilation.

2. Some lead fumes are released by welding or soldering operations. If indoors, provide ventilation according to operations.

3. No hazard exists from contact with lead metal, except transferring to mouth. Wash hands thoroughly before eating lunch.

4. Avoid chewing in area of exposure. Lead dirt and paint taken in through the mouth is frequent cause of trouble. Keep clean. Painters should not wipe their faces with hand or sleeve.

5. Insist on good housekeeping.

[fol. 745]

### Acids—General.

1. Carboys in storage should rest on wooden strips. When piled in tiers care should be taken that the bottoms of the upper row do not touch the glass necks of those below. Acids should not be stored in wooden buildings.

2. Departments where acids are stored or used should be kept clean and free from rubbish, and all slippery places should be treated. Pails of clean water and neutralizing solutions should be placed so as to be quickly and easily available for removing acid from hands, face, or other parts of the workers.

3. Where acid fumes have a toxic, corrosive, or asphyxiating action, great care should be taken to prevent operators from being over-come or injured.
4. Goggles and respirators should be available and employees trained in their adjustment and use. Also wear gloves and apron.
5. Metal drums or tanks containing sulphuric acid or its mixtures must not be left open. The absorption of moisture from the air creates an acid sufficiently diluted to cause a rapid eating away of the container at the surface line.
6. Naked flames, lights, or work of any kind which will cause a spark must be avoided around acid stored in metal tanks. The action of acid on metal may generate explosive gas mixtures.
7. In addition to the foregoing, areas in which acids are [fol. 746] stored or used should have the following neutralizing material available in convenient form:
  - a. For neutralizing acids in quantities, slaked (hydrated) lime.
  - b. For cleaning acid from floors and equipment or as may be required, 10 to 20 per cent soda-ash solution. This neutralizing process gives off heat and should not be used where large quantities of acid are involved.
8. Employees must not enter buildings or tanks in which there is an excess of acid fumes or vapors unless they wear suitable protective equipment and have attached to them lifelines controlled by another employee outside the tank or building.
9. Extra good housekeeping in immediate area essential.
10. Where continuous exposure exists, install emergency shower and have gas mask available.
11. Use safe carboy trucks and stands for moving and storage.
12. Withdraw by siphon bulb or inclinator, with full knowledge of dangers.

13. Do not store in exposed position where breakage would affect safety of personnel—as in stairwells, where fumes would filter down to lower level.

14. Upon receipt of new shipment, loosen cork to relieve possible built-up pressure, stand clear and wear protective clothing.

Réseal and store in safe place. If stored in cool rooms, temperature reduction will take care of internal pressure [fol. 747] and above treatment is not necessary.

15. Foremen shall thoroughly supervise handling and withdrawal of acids until they can depend upon safety of designated subordinates.

[fol. 748]

### Solvents.

Inflammable solvents will be stored and handled in accordance with the requirements of "Regulations of National Board of Fire Underwriters for the Installation of Containers for Storing and Handling Inflammable Liquids".

#### 1. Stoddard Naphtha

a. All equipment such as pumps, pans or tanks used in handling this solvent should be grounded electrically to prevent static electricity accumulations.

b. When cleaning with this solvent is done by hand, the work surfaces of tables or benches should be covered with non-ferrous metal connected electrically to the ground.

c. Supplies will be handled in Safety having self-closing lids.

d. Employees handling ferrous metal parts should be careful not to strike the parts together and cause a spark. All tools used should be of non-ferrous metal.

e. Stoddard naphtha will be mixed with sufficient carbon tetrachloride to raise the flash point to 135°. When mixtures of stoddard naphtha and carbon tetrachloride are prepared the density of the mixture should be determined with a hydrometer. This instrument must be used at frequent intervals to make sure that the proportions have not been changed by

[fol. 749] evaporation; while correctly proportioned mixtures of ~~soddard~~ naphtha and carbon tetrachloride will not burn, they add intensity to fire in other materials; therefore, tanks containing such mixtures should be isolated from the combustible materials.

f. Employees using this solvent will wear rubber gloves and rubber aprons to prevent the solvent from coming in contact with the skin.

g. Where used in confined spaces, workers will wear respiratory protective equipment (Canister Masks) of the approved type.

h. Workers exposed to vapors will wear non-ventilated splash-proof goggles.

## 2. Trichlorethylene.

a. Supplies should not be stored in plain bottles or where it is exposed to the sunlight, but should be stored in amber bottles or metal containers (Safety Cans with self-closing lids.) as it decomposes in sunlight and forms hydrochloric acid and phosgene gas.

b. Trichlorethylene or its vapors must not be allowed to come into contact with open flames or hot surfaces, such as steam coils, etc., because these articles will decompose the trichlorethylene into hydrochloric acid and phosgene gas.

c. Physical examinations ~~are~~ made at regular intervals of all persons using trichlorethylene.

d. Persons using trichlorethylene will wear rubber [fol. 750] gloves and rubber aprons that will protect the skin from the solvent action of the chemical.

e. Persons using trichlorethylene will wear respiratory protective equipment (Canister Masks) of the approved type.

f. Workers exposed to vapors will wear non-ventilated splash-proof goggles.

## 3. Ethyl Acetate.

a. Workers exposed to ethyl acetate or its vapors will wear rubber gloves and rubber aprons to prevent the solvent from coming in contact with the skin.

b. Ethyl acetate will be used only in self-closing metal cans (Safety Cans).

c. Non-ferrous tools must be used in opening containers of ethyl acetate.

d. Where used in confined spaces, workers will wear respiratory protective equipment (Canister Masks) of the approved type.

e. Workers exposed to vapors will wear non-ventilated splash-proof goggles.

#### 4. *Carbon tetrachloride*

a. Carbon tetrachloride must not be used in confined spaces such as rooms, vaults, or pits where ventilation is poor.

b. When used as a mixture with naphtha or other solvents to reduce the inflammability, the mixture [fol. 751] must be thoroughly mixed and tested with a hydrometer at frequent intervals to make sure that evaporation has not reduced the proportion of the mixture.

c. Carbon tetrachloride will be stored and handled in air tight metal containers having self-closing lids (Safety Cans).

d. The workers will wear rubber gloves and aprons to prevent the chemical from coming in contact with the skin.

e. Workers will wear respiratory protective equipment of the approved type.

f. Workers exposed to vapors will wear non-ventilated splash-proof goggles.

g. Carbon tetrachloride or its vapors should not be allowed to contact hot surfaces, as heat will cause it to decompose into phosgene gas.

#### 5. *Ethyl Alcohol (Ethanol)*

a. Inhalation of fumes causes symptoms similar to intoxication. Processes using this agent must be accompanied by good ventilation.

b. The workers will be equipped with rubber gloves and aprons to prevent the fluid from coming in contact with the skin.

c. Ethanol should be stored in air tight containers. (When in use the supply cans will be of the self-closing type (Safety Cans).)

[fol. 752] d. Workers exposed to vapors will wear non-ventilated splash-proof goggles.

### [fol. 753] Carbon—Monoxide & Dioxide.

1. Carbon Monoxide is poisonous and concentrations as low as 100 parts per million are unsafe:

From .01 % to .03 % may cause headache and dizziness,

From .03 % to .075% may cause unconsciousness,

From .075% to .10 % may cause death.

2. Carbon Monoxide is colorless, odorless, tasteless and non-irritating. Possible sources should be examined by competent engineers and all steps taken to eliminate hazards.

### 3. Some Sources:

	%Co
Cupola gas .....	17
Coal gas .....	16
Water gas .....	30
Coke producer gas.....	25
Fuel gas .....	30
Auto Exhaust .....	7

4. Do not leave motors running in closed rooms or shops!

5. Carbon Dioxide is much less toxic, but induces asphyxia by excluding oxygen. Due to heaviness of vapor it collects in low spots as in tunnels and manholes.

6. "Dry Ice" is the solid form of carbon dioxide. Where used, guard against released vapors. This may also cause damage in confined area where expanding vapor volume may blow out container. Handling "dry ice" may cause severe burns.

7. Safe limit of Carbon Dioxide is reached when oxygen content is lowered to 12% or Carbon Dioxide content increased to 3%.

8. For First Aid take employee to fresh air and if breathing has stopped, apply artificial respiration.

[fol. 754]

## Industrial Health.

### Aid for Women.

#### A. Lifting or Carrying Weights.

A recent study of industrial injuries sustained by women in the United States, indicates that 43.5% of all accidents were strains and sprains. These injuries came about because the employees tried to lift or carry weights too heavy for them. Women are not, because of their physical make-up, as well qualified as are men for manual labor.

The U. S. Department of Labor's Special Bulletin #2—(Lifting Heavy Weights in Defense Industries) notes that when a woman habitually carries or lifts weights too heavy for her, she is apt to endanger her spinal column, abdominal walls or pelvic region. Such weights are also liable to cause aggravation of menstrual cramp.

#### B. Odd Shifts.

For those who work on odd shifts, intelligent adaptation to systematic daily habits is important. Regardless of the hours, adequate rest and food are highly necessary. Organize your home life so that you will get these two essentials.

#### C. Posture.

It is recommended that in all lifting or carrying, the primary rule of good posture should be applied, i. e., "Stand close to object to be lifted or carried, bend knees and lift by straightening the knees, thereby putting the brunt of strain on the leg muscles, rather than on the back muscles."

[fol. 755]

## Weights of Materials.

Substance	Weight per cu. ft. in pounds
Ashes . . . . .	43
Benzine . . . . .	46
Brass, Cast rolled . . . . .	534
Brick, hard . . . . .	125
Cement, Portland . . . . .	94
Coal, piled, anthracite . . . . .	47-58
Coal, piled, bituminous . . . . .	40-54
Concrete, plain . . . . .	145
Concrete, reinforced . . . . .	150
Copper, cast-rolled . . . . .	526
Earth, dry, packed . . . . .	93
Earth, moist, packed . . . . .	100
Glass, common . . . . .	164
Granite . . . . .	179
Gravel, dry, loose . . . . .	90-105
Ice . . . . .	50-57
Iron, cast pig . . . . .	450
Lead . . . . .	710
Manganese . . . . .	475
Masonry, brick, pressed brick . . . . .	140
Masonry, concrete, cement, stone, sand . . . . .	144
Nickel . . . . .	537
Paper . . . . .	58*
Sand, gravel, dry, loose . . . . .	90-105
Snow, compacted by rain . . . . .	15-50
[fol. 756] Water, 40° C maximum density . . . . .	62,428
Wood, pine, white . . . . .	26
Wood, pine, yellow, long-leaf . . . . .	44
Zinc, cast-rolled . . . . .	440

\* Example: A pile of paper 4 ft. high would weigh 216 lbs. per square ft. of area and would be considered safe for floor marked for 200 lbs. per square ft. due to air spaces between bungles, which would bring this 216 down to about 200. However, a pile 6 feet high is dangerous on such a floor.

[fol. 757] Recommended Intensity of Light at Working Plane.

Foot Candles.

Location	Minimum Allowed	Recommended
1. Abrasive & Burnishing.....	2	15
2. Boiler Rooms .....	1	5
3. Carpentry-shop .....	1	19
4. Construction-indoor .....	1	10
5. Drafting Room .....	5	30
6. Elev. & Hoist Landings.....	2	10
7. Floor openings .....	1	5
8. Furnaces & Quenching.....	1	5
9. Garage—Gen'l .....	2	10
10. Garage Repairs .....	8	40
11. Lunch Rooms .....	5	8
12. Library—Gen'l .....	2	10
13. " Tables .....	8	15
14. Machine Shop—Gen'l.....	2	10
15. " detail work .....	10	50
16. Machine Oper. (unattended) ..	1	10
17. Machine Oper. (attended).....	2	20
18. Metal Working Machinery .....	2	15
19. Office—Gen'l .....	2	10
20. Office Desk .....	8	20
21. Paint Shop .....	2	10
22. Pattern Making .....	15	30
23. Plating .....	2	8
[fol. 758] 24. Printing & Lithograph .....	5	15
25. Rest Rooms, Lockers.....	2	5
26. Stairs & Ladders.....	1	5
27. Streets .....	1	2
28. Tool-Rooms .....	2	8
29. Warehouse, Shipping .....	2	5
30. Welding, Forge .....	3	10
31. Woodworking .....	3	10

If in doubt about working efficiency under specific light conditions, contact the Safety Department.

[fol. 759]

## Toxic Gases.

1. Hazard of industrial fumes, vapors and gases is by breathing them and not by swallowing. Hence air purity is important; check ventilating system.

Normal maximum safe limits are as follows:

Item	Parts Per Million
Ammonia .....	100
Amyl acetate .....	400
Aniline .....	5
Arsine .....	1
Benzene .....	100
Cadmium .....	0.1*
Butyl acetate .....	400
Carbon bisulfide .....	20
Carbon monoxide .....	100
Carbon tetrachloride .....	100
Chlorine .....	1
Chlorodiphenyls .....	1*
Chloronaphthalene .....	1 to 5*
Chromic acid .....	0.1*
Dichlorbenzene .....	75
Dichlorethyl ether .....	15
Ether .....	400
Ethylene dichloride .....	100
Formaldehyde .....	20
Gasoline .....	1000
Hydrochloric acid .....	10
Hydrogen cyanide .....	20
[fol. 760] Hydrogen fluoride .....	3
Hydrogen sulfide .....	20
Lead .....	0.15*
Mercury .....	0.1*
Méthanol .....	200
Monochlorbenzene .....	75
Nitrobenzene .....	5
Nitrogen Oxides .....	10
Ozone .....	1
Phosgene .....	1

Item	Parts Per Million
Phosphine .....	2
Sulfur dioxide .....	10
Tetrachlorethane .....	10
Tetrachlorethylene .....	200
Toluene .....	200
Trichlorethylene .....	200
Turpentine .....	200
Xylene, coal tar naphtha.....	200
Zinc oxide fume.....	15*

(\* Milligrams per cubic meter.)

#### *Explosive ranges of gases:*

Acetone .....	2.55%	to	13. %
Acetylene .....	2.3	80.	
Ammonia .....	16.	27.	
Amylene .....	1.6	—	
[fol. 761] Benzene (Benzol).....	1.4	6.7	
Carbon disulphide .....	1.25	50.	
Carbon monoxide .....	12.5	74.	
Coal gas .....	8.	23.	
Ethyl acetate .....	2.0	11.5	
Ethyl alcohol .....	3.3	19.	
Ethyl ether .....	1.85	48.	
Gasoline .....	1.4	6.	
Hydrocyanic acid .....	5.6	40.	
Hydrogen .....	4.0	74.	
Hydrogen sulphide .....	4.3	45.5	
Lead tetraethyl .....	1.8	—	
Methane .....	5.0	15.	
Pentane .....	1.4	7.8	
Methyl alcohol .....	6.7	36.	
Propane .....	2.4	9.5	
Toluene .....	1.3	6.7	
Xylene .....	1.0	6.0	

Note: Vapor from 1 gal. gasoline has explosive power of 96 lbs. dynamite.

## [fol. 762] Identification of Piping System.

	Color	Contents
Grey	Grey striped with 1" red every 3 ft.	Acid
	Grey striped with 1" green every 3 ft.	Sulphuric Acid
Orange	Orange with 1 black stripe	Caustic Soda
	Orange with 2 black stripes	5 lbs. Steam
Green		20 lbs. Steam
Red		200 lbs. Steam
Black	Black with 1" Grey Stripe every 3 ft.	Soap Solution
	Black with Red Band 12" to 18"	Illuminating Gas
		Cold Water
		Hot Water
Asphalt Black		Water for Fire Protection
Same as wall and ceiling		Soil Pipe not covered
Same as wall and ceiling		Soil Pipe Covers
Blue		Drain pipes covered and not covered
		Low Voltage Electricity
Blue with Red Stripe every 3 ft. Stenciled 13,200 volts		High Voltage Electricity
Blue Striped with Green		Fire & Guard Signals
Yellow		Compressed Air
Brown		Cantex-Annex Water

## [fol. 763] Angle Irons to be white on ceilings.

All pipe hangers same color as pipes.

All tanks to be identified by their original color.

All pipe supports grey enamel.

Coal Crusher and pulverizer, coal hoppers & boilers to be black enamel.

All covered pipes to receive two coats of paint.

First coat to be primer with gloss oil added; finish coat to be finished in its respective color.

[fol. 764]

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[fol. 767] Q. A. I think this was part of the booklet to which I referred.

Q. This is part of the booklet?

A. Well, there was possibly another booklet. I think there was a book here introduced in evidence this morning.

Q. The other one is the booklet identified as Plaintiffs' Exhibit F, which you saw this morning?

A. Yes, sir, I think that is the other one; yes, sir.

Q. Now, referring to this Plaintiffs' Exhibit F, you were given a copy of this booklet at the time you started [fol. 768] started your safety engineering work?

A. That is right.

Q. And you were given a copy of Defendant's Exhibit 1, is that correct?

A. We were given a copy of one of the books, which one—I think it was this one—when we first started.

Q. By "this", you mean Plaintiffs' Exhibit F?

A. Yes, sir; I think this one came later.

Q. By "this one", you mean Defendant's Exhibit 1?

A. Yes, sir.

Q. Notwithstanding you were furnished with copies of both of these books, you were given lectures on them?

A. Correct.

Q. And about how many lectures did you attend on these booklets?

A. I would say that it took perhaps eight weeks to go through that book.

Q. Who gave those lectures?

A. Well, they were given by "Mack" sitting back there, and also by Mr. Trimble.

Q. By "Mack" you refer to Mr. McDermott?

A. Correct.

Q. Mr. Trimble is one of the plaintiffs in this case, isn't he? A. Correct.

[fol. 769] Q. And he is one of the men who gave you lectures on safety engineering?

A. Correct. First aid, principally, I think was Mr. McDermott's lectures.

Q. Now, you were not only given lectures on the question of safety, as such, but you were given a course in first aid treatment? A. That is right.

Q. So that you could give first aid if required while you were waiting for the nurses' and doctors' arrival?

A. Correct.

Q. And about how long did your first aid course take?

A. Oh, probably six weeks, consisting of thirty minutes each week.

Q. Now during the entire time that you were working as a safety engineer you had weekly meetings that you attended, did you not?

A. That is what I refer to now, or that I have just referred to.

Q. Did you have weekly meetings held with the Safety Committee in the various departments in the plant?

A. No.

Q. Let me straighten that up. This testimony that you have just been giving were the meetings where the lectures [fol. 770] were given to you? A. Correct.

Q. Now you held other meetings, or safety engineers held other meetings weekly, didn't they, with the safety committees in the different units of that plant, in which you discussed and advised them with respect to safety matters and safety problems?

A. I don't ever recall attending a meeting of the safety committee.

Q. You attended meetings from time to time at which you were furnished various safety bulletins that were published by the Government, did you not?

A. Those bulletins, if we got them, you didn't necessarily go to the meetings, they were placed in your mail box.

Q. But you from time to time were given exhaustive safety bulletins published by the War Department, and were required to study them and discuss them and be advised by them, were you not?

A. We were required to observe them.

Q. To observe and be guided by them? A. Correct.

Q. Without attempting to identify them page by page, let me show you a file of such bulletins and ask you if those are the bulletins to which you refer?

A. I would say that some of those were received. Certainly, I don't think we received them all.

[fol. 771] Q. Can you point out any one that you didn't receive?

A. Well, I saw one a few minutes ago on statistics that I am certain we didn't receive. It might have been given in to the director and his assistants, but we did receive some of this type the subject of which was the use of liquid for cleaning process.

Q. And all the types of any you received of these bulletins without attempting to identify them one by one—

A. I say, some of them were received.

Q. Mr. Harris, I don't want to take up the time of the Court and parties here to go through these page by page. I wish you would read through these rather quickly and tell me if you received the bulk of the ones shown there?

A. There appear to be two of each here. I would say definitely that there were a number of these that we didn't receive; they were issued before I went in the department.

Q. Whether other men in the department received them at that time, you don't know?

A. I couldn't say. And a number of them were received early in 1942, prior to the time I went into the department. And if you restrict me to testimony on those which were issued after I went in the department, we will get down to apparently—which is this card here (indicating), I would answer that and say there were a number of these in a manual we were given, that I received. For instance, I [fol: 772] don't think we received this. This has reference to bonds which we didn't manufacture. I think you could safely say that these that refer to the product we manufactured, I probably saw part of them.

Redire<sup>c</sup>t Examination by Mr. Bond:

Q. Mr. Harris, these documents that you have been shown here are entitled War Department, Office of the Chief of Ordnance, Washington, signed by a name with the title Army Ordnance. Where did you get this form, such of them as you received?

A. Well, they no doubt selected the ones they wanted us to have and they came to us in a manual, in a booklet, they were loose leaf in a booklet.

Q. Were they accompanied with any instructions of any kind? A. No, sir.

Q. You just received them? A. That is right.

## Recross Examination by Mr. McRoberts:

Q. What were you told to do with them when you received them?

A. We were not told to do anything with them.

Q. Were you told to return them?

A. We found them in our mail box, as I told you.

Q. What did you do with them? A. I reviewed them.

Q. Did you attempt to be guided by them?

A. That is right.

[fol. 773] Q. Now, referring back to this Plaintiffs' Exhibit F, those were the instructions which the company gave to you as a safety engineer with respect to your duties?

A. That is right.

Mr. Bond: Just a moment. That is not what it says. It says "to all safety engineers." I think he ought to state correctly what the writing says. It says "to all safety engineers."

Q. You said this was the instruction to you as an individual that you were to be guided by regardless of what happened to the rest of the safety engineers.

Mr. Bond: That is not the record. There were no special instructions given to this man. That was introduced as a bulletin gotten out by the company, addressed to all safety engineers.

The Court: There was no such question asked, either.

Mr. McRoberts: If there is any question about it we will stipulate that a copy of these instructions was given to each of the plaintiffs in this case, but knowing this witness couldn't testify to that I tried to limit my question.

Q. These were the instructions that were given to you?

A. Correct.

Q. And you were told that you should be guided by these instructions. Is that correct? A. Yes, sir.

Q. And that this little book would tell you how to perform [fol. 774] your duties as a safety engineer?

A. That is right, in addition to what I gained through observation.

Q. And going back to that, in addition to lectures and

booklets and pamphlets, you were put out in the plant with an experienced safety engineer to work with you at first, were you not. A. Two weeks.

Q. And show you how these instructions should be applied in actual, every-day work? A. That is right.

Q. After that, you were on your own?

A. That is right.

Q. Now, in addition to the instructions which Judge Bond read to you--

Mr. Bond: What page are you going to read from, so I can follow you? It doesn't seem to be paged.

Q. You were furnished on page 3 with a check list of mechanical items, 1 to 11, beginning with machinery, equipment, and guards and safety devices and ending up with house sanitation and hygiene. Was that a list of the mechanical items that you were to examine and inspect from the standard of safety?

A. Yes, sir, insofar as it applied to my specific job.

Q. And following that there is another tabulation caption, "Check list of unsafe practices?"

[fol. 775] A. Yes, sir.

Q. Beginning with the question, "Do employees operate tools, appliances or other equipment without authority," and that list of unsafe practices goes on further to the next page, does it not? A. Yes, sir.

Q. And is that a list of the unsafe practices that you were to watch for and attempt to correct? A. Yes, sir.

Q. Let's take Question No. 2, "Do employees work or operate at unsafe speed?" Is that one of the things you were supposed to check? A. That is right.

Q. How'did you determine whether a man was working at unsafe speed or not? By observation?

A. By observation.

Q. A matter of judgment as to whether he was working too fast for safety or slow enough for safety, is that correct?

A. Well, it was a matter of judgment, the same perhaps as you might determine whether a man is driving an automobile too fast.

Q. A matter of judgment of what is negligent driving.

and it is a matter of questionable judgment, of course. Looking on down to Item 4. "Question: Do employees use defective tools or equipment, or use tools or equipment in [fol. 776] unsafe ways?" Did you determine that in the same way, merely by observation?

A. Well, of course, we were shown defective tools in the beginning.

Q. How about using tools in unsafe ways?

A. We were also explained the manner in which they should be used.

Q. You were given examples of what would be a dangerous method of using a tool and what would be a safe method of using a tool? A. Yes, sir.

Q. Were you shown the safe way and the dangerous way of using every tool in that plant, or were you just given examples?

A. We were shown with respect to hand tools which were commonly used in the plant. And getting back to the question you asked a little while ago with reference to the judgment exercised on whether a person was operating at unsafe speeds. Speeds had reference primarily to the operation of vehicles on which there were specified maximum speed limits set by the plant.

Q. It had to do with running or walking in the plant, too, did it not?

A. Running, of course, in the plant was prohibited. [fol. 777] Q. That was prohibited? A. Yes, sir.

Q. And there were constant bulletins and cartoons put out telling the employees to take it easy and walk and don't run? A. Correct.

Q. And go slowly and be safe. It was your job to watch for things of that sort, wasn't it? A. Correct.

Q. And where you found anyone violating it, it was up to you to try to correct it or recommend steps to correct it?

A. Well, we followed the procedure which was set up with reference to correcting these things.

Q. You made recommendations as to how the various unsafe practices could be eliminated or stopped, didn't you? That was part of your duties, wasn't it?

A. We made the recommendations based on the instructions that we received.

Q. Your instructions were as to how an ammunition plant could be operated safely?

A. That is correct. In other words, the recommendations that might come as a result of the information that they gave us.

Q. In other words, you were not an expert before you started?

A. We were merely following a program that was laid out for us by the company.

[fol. 778] Q. Let's turn over to page 4 of this booklet. And you were required to turn in a daily log, were you not? A. We were.

Q. And in that daily log you were supposed to make a clear and concise report of the condition that exists, and will include the suggestion or recommendation that will reduce or eliminate the hazard. That was part of your duties, wasn't it? A. Correct.

Q. And then turning over to page 5, you were instructed to make inspection of every department of the unit to which you were assigned, and further instructed—and I will read this:

"These inspections are made of the building structure, the machinery used for the manufacturing process, tools, equipment and materials and the working methods of the personnel in an effort to discover and eliminate any existing or potential hazard that may exist, by the development and application of corrective measures."

Those were part of your instructions, were they not?

A. That is right.

Q. And you were further instructed:

"Special investigations are made by the safety engineer, in the event of fire or accident, for the purpose of determining the reason for the occurrence of such an event, in order that this information may form the basis for corrective action which will prevent the occurrence of a similar event."

[fol. 779] Is that correct? A. That is right.

Q. You were also instructed: "The rehabilitation of employees who are partially disabled is another function of

the safety engineer? When such employee returns to work the safety engineer should contact the supervisor of the unit to which the injured person is assigned and will assist in placing the disabled person in some type of productive operation which will not further the person's disability." Was that part of your functions?

A. No, sir, it was not.

Q. You didn't carry out those instructions?

A. No, sir, the department set up a special department for that.

Q. Then you were instructed as follows: "In striving for the prevention of accidents, safety engineers will watch particularly for the"—and I call to your attention No. 2—"unsafe conduct on the part of the employee." How did you determine what was unsafe conduct on the part of the employee?

A. Well, as an example, [wrestling] or horse-play on the job.

Q. Horse-play, if it was extreme, was dangerous in an ammunition plant, wasn't it?

A. Horse-play was dangerous whether it was extreme or otherwise.

Q. How did you determine when horse-play was mild, inoffensive and not dangerous, and when it got to the point [fol. 780] when it was dangerous?

Mr. Bond: He didn't say that, he said all horse-play.

A. I determined horse-play is dangerous because in these educational meetings we had, that was definitely set out that horse-play was one thing to watch for as dangerous.

Q. What do you mean by horse-play, Mr. Harris?

A. As they explained to us, sparring, [wrestling]—I don't recall all the various types of horseplay they went into.

Q. You had been given all these instructions: "When a safety engineer observes an unsafe condition or an unsafe act that presents an immediate danger, he will call it to the attention of the foreman and will enter such infraction or condition on the daily report form which will in turn be submitted to the supervisor." You followed those instructions? A. I think so.

Q. How did you determine whether or not a condition was unsafe, or an act was unsafe and whether it presented immediate danger or not? By observation?

A. That is a little difficult to answer.

Q. Well, what you did, as a matter of fact Mr. Harris, was to observe the particular act or the particular transaction and decide whether in the light of what you had been told it was dangerous in the manufacture of ammunition; whether it was or wasn't dangerous?

A. I don't think we had any discussion whether it was [fol. 781] dangerous or whether it wasn't.

Q. You were told here in writing that if if presented an immediate danger you were to follow one course?

A. Yes, sir.

Q. And I am asking you how did you determine whether any danger was immediate or not?

A. We found out that it didn't make a great deal of difference whether it was immediately of danger or whether it wasn't, we had no authority to stop any operations.

Q. You didn't? A. No, sir.

Q. I call your attention to page 7 where it says: "When a safety engineer discovers what he considers to be the existence of an extremely hazardous condition, he is authorized to take immediate direct action to eliminate the hazard. Any unsafe condition in the restricted areas will also fall under this category. The safety engineer will use discretion in the exercise of this authority so that there will be no unnecessary interruption of production." Those were your instructions, were they not?

A. They didn't mean anything.

Q. Those were your instructions?

A. They were, but they were only paper instructions and didn't mean a thing.

Q. Did you ever find a dangerous condition and attempt [fol. 782] to stop the operation? A. Yes, sir.

Q. Did you stop it? A. No, sir, not to my knowledge.

Q. When an accident happened you made a report, didn't you? A. Correct.

Q. You had to make a report for every accident?

A. Yes, sir.

Q. Is that one of your reports?

A. I couldn't say that it is. It purports to be, it doesn't bear my signature.

Q. Were not practically all of your reports typewritten, the signature typewritten?

A. No, sir, I can't say they were.

Q. Some of them were? A. They could have been.

Q. Well, just to refresh your recollection on that point, Mr. Harris, I will show you a whole file.

The Court: Do you know whether they were or were they not? A. I don't know.

The Court: Were they, as a matter of fact?

A. No, sir, they were not all typewritten, I know.

The Court: You are taking a lot of time.

Q. (Mr. McRoberts) Mr. Harris, what you did was to write out one of your reports and have one of the girls in [fol. 783] the office type that up. Wasn't that the way you did it, ordinarily? A. Sometimes.

Q. Just look at that particular report.

The Court: He asked you whether you did it ordinarily.

A. Ordinarily, it would depend on the amount of time we had in the office.

Q. Mr. Harris, will you just glance through that file of reports which purport to bear your typewritten signature and tell me if those are your reports?

A. Many of them, no doubt, are.

Q. Now, going back to the one report which I showed you, and having refreshed your recollection, if it does refresh your recollection as to your practice, could you tell me whether that paper you have in your hand is one of your reports on accident? A. I don't think it is.

Q. Will you read over the thing, read your report and see if it refreshes your recollection?

A. I am looking primarily at the corrections that involve knowledge. You have underlined certain things.

Q. The underlined part was not on your report, of course. I am referring to the report in the condition before there was any underlining.

Q. In discussing these reports and in going through that mass of data you gave me a minute ago; I notice in practice [fol. 784] all of it there was no definite correction taken. Here you have selected one in which there appears to be some definite action on my part.

Q. Is that why you don't recognize that as one of your reports?

A. That is one of the reasons. And in addition thereto I might say that it is a well recognized fact that those reports were "doctored" many times after we turned them in.

Q. Did you ever "doctor" them? A. I didn't.

Q. Were you present when any report was "doctored?"

A. No, but I was told by one of the men—

Mr. McRoberts: I ask the witness statement with respect to the reports being "doctored" be stricken out?

The Court: Sustained.

Q. Now, Mr. Harris, will you say that wasn't a report which you made? A. I will.

Q. You say you didn't make that report? A. Yes, sir.

The Court: You say you didn't make it?

A. I didn't make it.

Q. (Mr. McRoberts) Did you ever make any report on the accident referred to in that case? A. That I can't say. [fol. 785] Q. Have you any recollection of having made an investigation of that particular accident?

A. No, I don't have.

Q. You say the report, you testify under oath that that report is not your report, you didn't make it?

A. I say I don't think it was.

Q. You don't think it was? A. No, sir.

The Court: You don't say positive whether it was or not.

A. No, I can't.

Q. Mr. Harris, when you investigated accidents, did you instruct the injured employees, caution them as to what they should or should not do in order to avoid accidents?

A. We sure did.

Q. Then when you testified on direct examination, as I understand, that you have made your recommendations or reports only to the main supervisor, that was in error to that extent, wasn't it?

A. Well, I think I testified that was in connection with corrections. We would define a correction, some action that was actually taken to correct a condition. It may or may not have been made by someone else as a result of our recommendation to the foreman.

Q. When it came to giving instructions or precautionary words to the employee as to how to avoid accident, did you [fol. 786] give that to them?

A. I think we did, and only then in connection with first-aid cases.

Q. Well, just as examples of your work I call your attention to another one of these accident reports bearing a typewritten signature. Did you make that report?

A. Yes, I think I did.

Q. And in that report, under the caption "correction" you say the injured employee's name being Arthur Pollman, Mr. Pollman was requested not "to attempt to operate machinery until it had been formally turned over to him by a machine shop?" That is the action that you took in that particular case, isn't it?

A. Yes, sir, that was a first aid.

Q. I call your attention to another report and ask you if that is one of your reports. A. That is right.

Q. And in that particular case, under the caption "correction," you said: "Cautioned employee to leave lowering or raising of tail-gates to driver in the future, that that work is the duty of the driver." That is a correct statement of the action you took in that particular case, isn't it? A. Yes, sir.

Q. I call your attention to another report bearing a typewritten signature. Was that report made by you? [fol. 787] A. I presume it was.

Q. Under the caption "correction" you say, "Employee was instructed how to lift properly and cautioned to follow correct lifting procedure in the future." Does that correctly state the action that you took in that case?

A. Yes, sir.

The Court: Speak out, I can't hear you.

Q. I show you another report, was that made by you?

A. I presume it was.

Q. And under the caption "correction" you state, "Cautioned employee to see that the brass is placed in littrell machine and not left suspended from hoist. Foreman also requested to watch this condition and attempt to keep it corrected." Does that describe the action that you took in that case? A. Yes, sir.

Q. And here is another report. Is that another one of your reports? A. It appears to be.

Q. And the action in that case, under "correction" "Employee was given proper lifting instructions." That describes what you did in that case, doesn't it?

A. Probably.

Q. I show you another report and ask you if that is your report? A. Yes, sir.

[fol. 788] Q. And under the caption "correction" there: "Cautioned employee to always shut off a machine before reaching into it, also to refrain from making adjustments until he is classified as an adjuster." That describes the action that you took in that case, does it not? A. Yes, sir.

Q. I call your attention to that report which bears your typewritten signature F. N. Harris. A. Yes, sir.

Q. And your answer? A. I presume it is.

Q. And the action which you took there stated under "correction" was, "Employee was given thorough job instructions which included pointing out the hazards of the job." Does that describe the action that you took in that case? A. I think so.

Q. Here is one that bears your manual signature, does it not? A. Yes, sir.

Q. And in that particular report under "correction" you said: "Cautioned injured employee and all four women operators around machine to turn off power in the future before reaching into the machine." That correctly describes the action which you took, does it not?

A. Yes, sir.

[fol. 789] Q. Now another part of your work as a safety engineer was to make recommendations for the installation of guards on machinery from time to time, wasn't it?

A. That is right.

Q. How did you determine when a guard was needed?

A. Usually as the result of an accident.

Q. And then you would decide that some type of a guard was required and would occasionally recommend that one be installed?

A. We might reach the conclusion that a guard was necessary and then the procedure was to file a report with the supervisor stating our views on the matter, and then they in turn would refer it to the so-called engineering department within the safety department.

Q. And it would be up to the engineering department to design a particular guard for that operation?

A. They would first go out and determine whether or not they thought our opinion was worth while on the subject.

Q. And you would make all sorts of reports for other operations that you thought would conduce to safety, would you? A. I don't understand your question.

Q. Well, let me give you some examples here. I will show you another report and ask you if that is one of your reports? A. I presume it is.

Q. And the action which you took there is stated in this [fol. 790] language, is it not? "Note the board which has been laid between machines 7 and 8 and suggest similar permanent boards be laid between all machines and steps erected to permit men to reach walk. These move--men otherwise are compelled to climb up and take all sorts of chances. Cautioned patient to be careful in the future until proper cat-walk is erected." That is the description of the action you took in that case, isn't it? A. I think so.

Q. I show you another report and ask you if that is one of yours. A. I presume it is.

Q. And the action that you took in that case was as follows, was it not? "Recommended a different type of goggle for use for operating saw, a form-fitting goggle which completely covers the eye-socket." Is that correct?

A. Yes, sir.

Q. This one is written out entirely in your handwriting, signature and all, isn't it? A. Yes, sir, it is.

Q. In that particular case the correction is in the following language: "The only suggested remedy would be the feasibility of wearing gloves when doing this particular job." Now in that case that was the only thing you could think of to remedy that condition, isn't it? [fol. 791] A. That is right.

Q. So you decided that wearing of gloves was the only way to cure that type of accident, prevent that type of accident in the future?

A. That was my thought in the matter.

Q. That was your judgment, was it not?

A. That was my thought in the matter.

Q. Mr. Harris, do you remember an occasion when some welding was being attempted at some freight elevator door

openings, and there was a question as to what should be done about it, and you made a report on it?

A. No, I don't remember exactly. There was a good deal of welding done in the plant.

Q. Let me show you what purports to be a copy of a daily log bearing your typewritten signature, and I ask you to read that over. A. Now your question.

Q. The question is, do you recall that incident?

A. I don't recall it, but it could have occurred.

Q. Do you question that that is a correct transcript of your daily log?

A. It purports to be my daily log and bears the typewritten signature of mine.

The Court: Have you any recollection about it?

A. No, I do not. This is an occurrence that frequently [fol. 792] the elevators needed repair. I don't remember the specific instance. I haven't been there for over a year and recalling specific incidents, it is difficult.

Q. Do you recall a difficulty they had when welding was being done that there was certain danger of fire's and some fires had been occasioned by that, and this was one of the incidents that caused a special rule to be made that the safety department had to be notified and be present whenever any welding was to be done?

A. Well, the general rule in effect with respect to welding was that prior to the actual work being done we were required to inspect it and then call a fireman who would then turn the job over to the fireman who would stand there with his fire apparatus to put out a fire if one developed.

Q. And if a welder started to do his welding before you had made your inspection and made this arrangement, you would make him stop until those things had been done, wouldn't you? A. I don't know about making him stop.

Q. That is what you did in this instance, didn't you?

A. As I told you before, we had no authority to stop anybody.

Q. Just confine yourself, Mr. Harris, to what you did.

A. All right, I had no authority to stop anyone from doing anything.

Q. Despite the fact you had that written instruction [fol. 793] which you say had been furnished to you?

A. We definitely attempted to follow the written instructions, but we soon found out it was useless, they laughed at us, they were production conscious.

Q. You can't recall a single specific instance when an immediate hazard, an immediate danger was present and you attempted to exercise this authority given to you in your instructions, and didn't succeed?

A. At the moment, I can't—Yes, sir, I can, now that I have thought it over.

Q. Tell us about it.

A. I recall specifically an instance in Building 105, loading, on making my customary patrol of that building, I was on the night shift, I found an employee working in the building without safety glasses. I went to the foreman and asked him to have the employee removed from the job, and he said he would do it. I took it for granted that he did, and on my later patrol, some two hours later I found the man working on the job without glasses. I reported it to my supervisor and I was given a 3-day suspension as a penalty for not having a man taken off the job. How could I take him off the job? I didn't even have the authority of a guard. I didn't have authority to arrest or incarcerate.

Q. Do I understand you correctly that you were given a three-days suspension by your supervisor for failure to [fol. 794] make that employee stop operations without safety glasses? A. Right.

Q. Do you remember when that was, Mr. Harris?

A. I think it was in the summer of 1943 or spring of 1943, or maybe the winter, I don't recall. But you probably have an IRP 43, I believe it was they gave on that, for which they suspended me and docked my pay, incidentally.

(Court and Counsel confer at Court's Bench.)

Q. Mr. Harris, you went to work first as a receptionist?

A. Correct.

Q. And that had nothing to do with the safety department? A. No, sir.

Q. And you are not making any claim in your suit for any overtime while you were a receptionist? A. No, sir.

Q. Your only claim that you are making is for overtime after you went into the safety department? A. Correct.

Q. When you were transferred from the receptionist job to the safety engineer's job, who made the arrangement? Who interviewed you and told you what your duties would be? A. Mr. Hartling.

Q. What did he tell you as to what the salary was going to be? A. Mr. Hartling didn't tell me.

[fol. 795] Q. Who did tell you what your salary was going to be? A. Mr. Strickland.

Q. Mr. Strickland was the head of the safety department? A. That is right.

Q. Did Mr. Strickland discuss your duties with you also? A. No, sir, he didn't.

Q. Mr. Hartling did that? A. No, sir.

Q. Did Mr. Strickland tell you what hours you were going to work, or did Mr. Hartling do that?

A. Mr. Hartling.

Q. And what hours did Mr. Hartling tell you you were going to work?

A. Mr. Hartling simply told me that I would be required to work around the clock. I mean by that, it was a three-shift basis.

Q. In other words, you were told that you would be assigned to one of the three shifts? A. That is right.

Q. The company was then on a three-shift basis? Working around the clock each day? A. That is right.

Q. And there were certain men in the safety department assigned to each of those shifts? A. Correct.

[fol. 796] Q. And each shift worked normally eight hours a day, six days a week, did they not? A. Correct.

Q. And you were told that your duties would be to work with the shift to which you were assigned?

A. That is correct.

Q. And that you would work the same hours that your shift, the production shift, worked. And I am not referring to this preliminary time before the shift at the moment. I am not trying to cut you off on that. Your duties would require you to be on duty whenever your shift was on duty?

A. No, sir, there was not any such discussion on that.

Q. Just what was the discussion?

A. Mr. Hartling told me in this particular case I was a new man and I was going to be assigned to a man named

Burke for two weeks; and Mr. Burke was on the day shift. And he told me to be there at 7:30 the following morning, and since I was on the day shift I would be required to come in one-half hour before the shift. And he told me substantially what was in the bulletin.

Mr. McRoberts: I ask that be stricken out, if Your Honor please. I would like to have the exact words and not "substantially what is in the bulletin."

Mr. Bond: The bulletin is in evidence, Your Honor.

The Court: Objection sustained.

[fol. 797] Q. Mr. Hartling told you you would have to report a half hour ahead of the shift and that you would have to work during the same hours that the shift worked in addition to that half hour? A. I didn't say that.

Q. What did he say as to when you could go home?

A. He told me in that instance that I would work from 7:30 until 4:00.

Q. And since your shift was on day shift you would report at 7:30 in the morning and work until 4 o'clock in the afternoon six days a week?

A. He didn't say anything about six days a week at the time. He added the further information that there were two rest periods during the shift, that we take two rest periods between going on work and between the lunch session, and our lunch session we would take at no regular time, just whatever fit in with our convenience. The lunch hours were from 11:30 to 1:30; that, however, we were subject to call at any time we were on duty. I mean if we happened to be in the lunchroom and something required our presence in the building, we were on duty.

Q. Mr. Hartling, if I understand you correctly, told you that you had to report at 7:30 in the morning and work until four o'clock in the afternoon? A. Correct.

[fol. 798] Q. How many days a week did he tell you you would have to work?

A. He didn't specify any number of days.

Q. Did he tell you how often the shift worked, or did you know that?

A. I knew that the shift work changed about every thirty days.

Q. How long had you been out at that plant before you started in the safety department? A. February to May.

Q. And you knew each shift worked eight hours a day, six days a week, didn't you? A. That is right.

Q. And you were told you would be assigned to one of the shifts? A. Correct.

Q. And you would report a half hour before that shift started?

A. I was told that the hours were from 7:30 until four.

Q. And when you started to work you worked six days a week, didn't you? A. Yes, sir.

Q. Except for occasions when you should have been off you worked six days a week throughout the period of your employment in the safety department?

[fol. 799] A. Correct.

Q. Who told you what your salary was going to be? A. Strickland.

Q. And he told you your salary was going to be \$200 a month? A. That is correct.

Q. What else did he say about your salary besides that? A. Nothing.

Q. And you were paid at the rate of \$200 a month from the time you began working as a safety engineer until you were subsequently raised?

A. I never received \$200 a month.

Q. Well, what do you mean by that, Mr. Harris?

A. Well, at the end of the year, if you computed it on an annual basis it was less than \$200 a month.

Q. Let's go back to the months themselves. The first month you worked how much money did you receive?

A. On the basis of \$200 a month I received \$46.15 a week.

Mr. Bond: Exhibit A you are looking at now?

Mr. McRoberts: Yes, sir.

Q. As a matter of fact, Mr. Harris, for the pay roll period under May 31, 1942, that is the one week, you received gross wages of \$46.15 did you not?

A. I presume I did.

Q. Less a deduction of 46 cents for Federal old age benefit tax, and miscellaneous deduction of \$4.90, and for

[fol. 800] every week thereafter until November of 1942 you actually received gross wages of \$46.15 less Federal old age benefits of .46 cents and a net amount of \$45.69, is that correct?

Mr. Bond: Your Honor, we accept those figures that are in evidence. I don't see why we need waste time asking the witness about that. Just read from that as admitted figures. The figures that the exhibit shows he received each week, both sides concede. Just read from them.

The Witness: I concede it with the exception that on the week ending November 15th I failed to put in 40 hours and they docked me.

Q. (Mr. McRoberts) Week after week from May, 1942, down to November, 1942, you received the same figure each week? A. Yes, sir.

Q. And that figure is a gross figure of \$46.15 and a net figure of \$45.69 after deducting Federal old age benefit? That is correct?

A. I say the gross is correct, I don't know about the net, it would depend on what the deductions are.

Q. Well, the gross was the same each week?

A. Yes, sir, correct.

The Court: If you answer the question instead of arguing the case, it would be better.

Q. Now Mr. Harris, during all of that time you worked [fol. 801] six days a week? A. Yes, sir.

Q. And did you say anything to Mr. Strickland or to anybody at the United States Cartridge Company about overtime? A. Yes, sir, I did.

Q. When was that?

A. I don't recall exactly when it was.

Q. Was it the first week or second week, or two years later? A. I don't recall exactly when it was.

Q. Approximately when was it? Can you tell me approximately when it was?

A. No, except to say it was sometime after my employment in the safety department.

Q. A year afterwards?

A. I couldn't say exactly. I know it was, but I definitely raised the point—

Q. It was at least a year afterwards, was it?

A. I can't say that.

Q. It was many months after you started to work?

A. I would say it was quite sometime after I started to work.

Q. And during all that time you accepted the payments shown on this Exhibit A without complaining or questioning anyone connected with the company?

A. No, I couldn't say that.

[fol. 802] Q. What would you say? Tell us what you did?

A. I first discussed it with my supervisor.

Q. When did you first discuss it with him?

A. Well, my recollection is a little bad on that, but I told you I first discussed it with my supervisor.

The Court: Who was that?

A. Well, we had three.

The Court: Who was the one you discussed it with?

A. Mr. Maher. And Mr. Maher was supposed to take it up for me.

Q. (Mr. McRoberts) About when was that, Mr. Harris?

A. It was quite some time after I went in the safety department.

Q. Then up to that time and for quite sometime after you went into the safety department you accepted these payments without making any complaint to anyone connected with the company. Is that correct?

Mr. Bond: Object to the relevancy of all of this because under the Fair Labor Standards Act the rates provided in that act have to be paid by law, and they cannot be abrogated or changed by contract.

Mr. McRoberts: I am asking this question directed to the credibility of the witness as to what the actual understanding was as to whether the \$200 a month was—

The Court: You may answer subject to the objection.

[fol. 803] (Last preceding question was read)

A. For quite sometime I accepted the payments.

Q. While you were accepting the payments, did you make any complaint to anyone connected with the company about that? A. I did.

Q. And your first complaint was to Mr. Maher?

A. That is correct.

Q. And up until that time you made no complaint to anyone?

A. Correct. I may add, if I may, that before I registered a complaint with Mr. Maher I called at the Wage and Hour Bureau here in the city and determined that my views on the subject—

Mr. Bond: Now wait a minute; just a moment. Don't give us any opinion; you can tell us what you did.

A. All right.

Q. When was it you went to the Wage and Hour Bureau? A. I can't give you any date except as to—

Q. Is that about the time you talked with Mr. Maher?

A. Just before then.

Q. And after you had been in the department for quite some time? A. Yes, sir.

Q. Mr. Harris, you started to work at \$200 a month in May of 1942, and you worked at that salary until January [fol. 804] 25, 1943, did you not? Approximately that date?

A. Apparently I did.

Q. At which time you were increased to \$225.

The Court: You say "apparently." Didn't you actually?

A. He is talking about specific dates.

Mr. McRoberts: I said approximately.

Mr. Bond: He has the figures before him and Mr. Harris hasn't. These exhibits show what he was paid.

A. I could answer that question and say whatever that exhibit shows is substantially correct.

Q. I want to bring out this fact, Mr. Harris: January, 1943, you were increased to \$225 a month? Is that correct?

Mr. Bond: Is that your exhibit?

A. That is correct.

Q. And in October, 1943, you were increased to \$240 a month. Is that correct? A. That is correct.

Q. During all of that time had you made a complaint about the payments you received? A. Yes, sir, I had.

Q. Was that before or after you received this first increase? A. I would say it was before.

Q. On October 25, 1943, you were then promoted to assistant foreman, were you not, and your salary was increased to \$279 a month. [fol. 805]

A. I was told by the superintendent that I was promoted to general foreman.

Q. Your understanding was that from October 25, 1943, you were a general foreman? A. Correct.

Q. And your salary then went up to \$279 a month?

A. That is correct.

Q. And when you became general foreman, were you over any of the other safety engineers? A. No.

Q. You were assigned to the production department then, were you not? A. I was.

Q. You were transferred out of the safety department and put over in the production department as a foreman, but in charge of safety work for the production department? Is that about what it amounted to?

A. That is what I was told.

Q. You were told that was what your title and your duties were?

A. That I would be assigned three men who would work around the clock; that I would work the day shift and come in on the other shifts when I deemed it necessary and check these other men, but due to the man power situation, temporarily I wouldn't be able to work under that [fol. 806] arrangement because I would have to work a shift as I had formerly been doing.

Q. You were in charge, then, of the two men, or, if they ever got the other one, the three men who worked around the clock in your particular building? Is that correct?

A. I was told that.

Q. The safety engineers on the other shift worked under your general supervision and direction?

A. They were supposed to, but I never at any time was given the third man, and as a result I was compelled to work a shift myself and could never supervise their work.

Q. Now, going back to this question of your actual duties, Mr. Harris: You made these inspections and when you found something was wrong you took the steps to

correct them or have them corrected, as you have testified to. Who did the manual work of making those corrections? Did you do it? A. No.

Q. That would be done by other employees?

A. The actual corrections were either made, or they failed to make them, by the foreman of the employee who needed the correction, or the condition that needed correction.

Q. And that foreman would either do it himself or tell some man to go out and do whatever had to be done?

A. Or he wouldn't do it at all, one or the other.

Q. But you, yourself, didn't install guards on machines?

A. No, sir.

[fol. 807] Q. Or physically go out and change the working conditions, or attempt to change them. You simply make your recommendations or gave instructions as to what was to be done?

A. Well, except on occasions when I took it upon myself, being unable to get the cooperation of the foreman to [clean] excessive powder off the machines.

Q. On occasions you would see some excessive powder on a machine, you would just do it yourself?

A. When I couldn't get the cooperation of the foreman.

Q. You were not told that you were supposed to do that, were you? A. No, sir.

Q. Didn't consider that part of your duties, the foreman was supposed to take care of that? A. That is right.

Q. Upon your orders or directions? A. Yes, sir.

Mr. Bond: Object "on his orders," no evidence of that.

Q. Upon your recommendation or request?

A. My request.

Q. You say that on some occasions when those requests were not complied with you undertook to clean up the excess powder yourself? A. That is correct.

Q. By "powder" you are referring to explosive powder, [fol. 808] smokeless powder? A. Yes, sir, correct.

Q. Why did you do that yourself if that wasn't part of your duties?

A. We had been told that the accumulation of excessive powder on a machine was a dangerous situation.

Q. And you considered it was dangerous to leave it there?

A. I believed what I had read in the manuals and I did it myself.

Q. You spoke of a Mr. Hirschberger, you reported to him, I believe, at one time?

A. Mr. Hirschberger was an assistant director.

Q. Assistant director in the safety department?

A. Yes, sir.

Q. And you reported to him? A. Yes, sir.

Q. Mr. Hirschberger, I believe, is one of the plaintiffs in this case, is he not?

A. Yes, sir. Mr. Hirschberger, however, for quite a long time was an ordinary safety inspector.

Q. In your direct testimony you referred to some special clothing that you safety engineers were required to wear?

A. Yes, sir, they provided us with a uniform and we were compelled to wear it.

Q. And were you or were you not permitted to wear that [fol. 809] uniform home, or were you compelled to leave it at the plant and change?

A. We were compelled to leave it at the plant.

Q. Were you not told that you could leave it at the plant or wear it home at your option?

A. We were not, nor were any of the other employees in the explosive area, such as I was assigned to, permitted to wear their uniform home.

Q. Were you present when they were given instructions?

A. No, sir, it was a printed instruction.

Q. Do you have that? A. I do not.

Q. This was only while you were in the explosive area that you had the uniform that you were not permitted.

A. I wore it all the time until the transfer into production. Then they took it away from me.

Q. When you were in the production unit you didn't wear a special uniform?

A. Yes, sir, I did wear a special uniform.

Q. You said something about they took it away from you, and I didn't catch that.

A. To clear up that statement, when I first went in the safety department I was assigned to the so-called explosive area, which was the loading part of the plant. I remained in that work for quite a long time and was transferred into a production building where I worked quite a

[fol. 810] long time prior to transfer from the safety department to the production department. It was at that time, when we all transferred, or at least the bulk of us, from the jurisdiction of the safety department to the production department, our uniforms were taken away from us.

Q. And what happened to them, with respect to uniforms? A. Wore our own clothing.

Q. Wore your own clothing? Didn't wear a uniform any more? A. That is correct.

Q. That was about what time that you quit wearing a uniform? A. I think it was in October of 1943.

Mr. McRoberts: I think that is all, Your Honor.

Redirect Examination, by Mr. Bond:

Mr. Bond: Just a few questions, Mr. Harris.

Q. From that file of your reports that was first exhibited to you, Mr. McRoberts called your attention to a few instances where you had reprimanded an employee. Was that the regular practice?

A. It was in connection with first-aid cases.

Q. First aid cases?

A. Yes, sir, it wasn't in the form of a reprimand exactly as it was in the form of an attempt to explain to the employees the unsafe practice of wrestling.

Q. Those were instances that were connected with an [fol. 811] injury that had been sustained? A. Correct.

Q. And I believe your instructions that I had you read, or that I read in the record this morning, contained a sentence, or an exception where employees were engaged in an operation where serious injury may result? Is that correct? A. Correct.

Q. Where there was no injury or no other threat of immediate injury, was that your practice to reprimand the employee? A. No, it wasn't.

Q. Or to take any corrective action? A. No, sir.

Q. Would that come within that part of the instructions where you were directed not to attempt that in any way?

A. Yes, sir.

Q. Now then, in such cases you would, however, report

the occurrence to your supervisor for information, wouldn't you? A. That is correct.

Q. And would the supervisor report it to Mr. Strickland? A. He did.

Q. And he would include yours and other safety inspector's reports in his? A. Yes, sir.

Q. And were they sometimes circulated among all safety [fol. 812] engineers? A. They were regularly.

Q. I show you one and ask you if this is a sample of such report of the supervisor and safety engineer to Mr. Strickland containing reports of ordinary engineers or inspectors, and a copy of which went to all inspectors?

A. It is.

Q. Taking the first two items on that report, I see that they refer to reports that you made to Mr. Kemp. He was then chief supervisor? A. Yes, sir.

Q. The first is "Infraction: Employee was wearing wrist watch. Foreman Hoffman. Remarks: Foreman reprimanded employee." Who was Hoffman?

A. He was a department foreman.

Q. Over the employee? A. Yes, sir.

Q. And under "remarks:" "Foreman reprimanded employee." That was the corrective action that was taken?

A. Yes, sir.

Q. By whom was it taken? A. By the foreman.

Q. Now the next item. "Not wearing safety shoes. Hoffman." "Foreman sent employee to safety store to buy shoes." Does the same explanation apply to that?

A. It does.

[fol. 813] Q. Are those two items that I have read into the record illustrative of the general practice that you followed in the matter of reporting infractions that you had observed? A. It was.

Mr. Bond: I ask that report be marked "Plaintiffs' Exhibit H $\frac{1}{2}$  (The report is marked as requested.)

[fol. 814]

## Plaintiffs' Exhibit H.

To: Clyde E. Strickland

April 27, 1943

From: A. C. Kemp

Subject: Report of Violations of Safety Regulations 12-8 Shift

## Unit 102—reported by Safety Engineer Harris

Dept.	Badge	Infraction	Foreman	Remarks
121	14712	Employee wearing wrist watch.	Huffman	Foreman reprimanded employee.
121	3880	Not wearing safety shoes.	Huffman	Foreman sent employee to Safety Store to buy shoes.

## Unit 103—reported by Safety Engineer Yard

137		Powder vault in #2 Plate Loading Unit was found overloaded.	Fields	Foreman instructed powder man not to exceed the limit.
136		Poor housekeeping.	Tripp	Foreman corrected the condition.
135	4608	Not wearing safety glasses.	Sieland	Employee were reprimanded by foreman.
323	52604	Wearing jewelry	Naes	" " "
323	49445	" "	"	" " "
139	56763	" "	Bonham	" " "
323	43255	Not wearing safety shoes.	Naes	" " "

## Unit 104—reported by Safety Engineer Gorg

149	13331	Employee working without safety glasses.	Puricelli	Foreman had employee secure glasses.
149		Soap barrel with exposed nails in rim.		Foreman had nails removed.
143		Drive chain guard on #7 Washer out of place.	Winkler	Foreman stated he would have guard replaced.
146		Rear guard on Bullet Assembly machine #3 hanging loose.	Reisch	Foreman stated have guard repaired.

[fol. 815]

## Unit 105—reported by Safety Engineer Drozda

157		Packing chests being used as tote boxes were being overloaded with cartridges.		Foreman said he would make an effort to have practice stopped.
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## Unit 110—reported by Safety Engineer Hahn

Inspection of all Departments revealed housekeeping good, all mechanical guards in place, and personnel conforming to Safety Regulations.

## Restricted Area #1 Plant—reported by Safety Engineer Peterson April 26, 1943

Dept.	Badge	Infraction	Foreman	Remarks
185	54551	Working at #9 30-Cal. Tracer Charge machine with sleeves down over arms and plastic cord dangling from neck.	Ward	Foreman had employee roll dress sleeves above uniform sleeves and slip cord inside uniform.
185	#2-50 Cal.	Excessive powder accumulation around and under powder stations.	Ronsick	Foreman had machine cleaned and re instructed employee employees.
185	#5-50 Cal.	Excessive powder accumulation around and under powder stations.	Ronsick	Foreman had condition corrected

## Restricted Area #1 Plant—reported by Safety Engineer Peterson April 27, 1943

185	<del>#9-50</del> Cal.	Machine idle, powder in powder stations.	Ronsick	Foreman had powder removed immediately.
185	#12-30 Cal.	Powder heaped above water pan under powder stations.	Ward	Foreman had condition corrected immediately.

## Restricted Area #2 Plant—reported by Safety Engineer Tyler

Inspection of Departments 33., 281, 285, and 286 disclosed that employees were conforming to Safety Regulations, mechanical guards were in place, and housekeeping was good.

287	X-Alloy Sieve Room #7 218-C; X-Alloy left in containers after sieve was used. About 2# powder.	Glaeser	This material was left from 2nd shift. Arrangements made to prevent recurrence.
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[fol. 816]

287	Magnesium Sieve Room #10, Bldg. 218-A; containers left with magnesium in them under sieve. Sieve not in operation.	Allred	Foreman will issue instructions to avoid recurrence.
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## Unit 202—reported by Safety Engineer Livsey

Housekeeping in good order, mechanical guards in place, and personnel conforming with Safety Regulations.

## Unit 203—reported by Safety Engineer Livsey

Housekeeping in good order, mechanical guards in place, and personnel conforming with Safety Regulations.

## Unit 204—reported by Safety Engineer Zott

Dept.	Badge	Infraction	Foreman	Remarks
244		Acid leaking from Pickler drain pipe, and dropping near employees working in the Jacket Draw Dept.	Schuettenberk	Foreman issued instructions to the Plumbing Dept. to repair the leaking pipe immediately.
248		The rear exit in the Restricted Breakdown Area was blocked by gondolas.	Woods	Foreman ordered a floor-man to move the gondolas away from the exit at once, and instructed the employees working in the breakdown area not to block the exit at any time.
249		Light bulb was burned out on the stairway leading from the Packing Dept. on the 2nd to the 1st floor.	Parker	Foreman instructed the Electricians to replace the burned out bulbs at once.

## Unit 205—reported by Safety Engineer Jennings

Inspection reveals housekeeping in good order, the few employees working conforming to Safety Regulations.

[fol. 817].

## Copies Sent To:

D. C. Storms	E. H. Ebert	J. V. Boyd
B. E. Rogers	H. C. Boling	C. W. Conrad
J. C. Stewart	I. De Grote	A. P. Rudloff
O. W. Roberts	K. W. Kaveler	C. C. Simmons
B. L. Haag	F. Garetson	C. F. Seger
G. A. Gilbertson	A. Kemp	E. J. Schaller
M. Hurley	E. Maher	W. Schutz
A. E. Allen	J. McKittrick	E. J. Strong
A. G. Krus	S. W. McDermott	P. R. Tebeau
F. B. Attwood	M. M. Meyer	C. J. Werner
C. W. Beck	W. C. Marks	B. Ludwig
V. P. Birtley	W. C. Nash	H. S. L. Wheat
J. M. Baker	W. O'Mara	G. J. Wuigk
R. L. Burridge	E. Peters	R. St. Mary
R. W. Clifford	E. J. Ruby	B. Willmering
S. B. Sponder	M. F. Smith	C. Kamper
O. M. Biederman	M. P. Cody	A. Lockhart
A. Bohn	R. V. Oldham	W. B. Martin
J. C. Sewell	W. J. Hartenbach	J. De Largy

All Safety Engineers.

[fol. 818] Q. Your attention was also called to the fact that in some of your reports when you having reported the infraction or occurrence you accompanied it with a recommendation. I will ask you if you had any authority to put these recommendations into effect? A: No, I didn't.

Q. To whom did these recommendations go?

A. To either the foreman of the department, or to his superintendent, or general foreman, or to my own department supervisor.

Q. And beyond the department supervisor would that be included in his report to Strickland?

A. I don't understand.

Q. Your recommendations, would they be passed by your supervisor on to the director?

A. I presume, I don't know.

Q. But who had the authority to say whether or not those recommendations would be put into effect?

A. Mr. Strickland.

[fol. 819] Q. Mr. McRoberts drew attention to the period of the latter part of your employment where you were given the title of foreman. Tell us what, if any, change giving you that title resulted in your duties?

A. As I stated before, there was absolutely no change in my duties. I never at any time had the three men that were necessary to free me to supervise the work. The greatest number of men I had were two. There were three shifts in operation and therefore I had to work one of them, and when the building that I patrolled went on a schedule of .60 calibre ammunition it was reduced to a one-shift basis and the other two men were either transferred or let out and I was retained, the only safety man in the building, and I continued to do the same work then I did when I was originally employed in 1942.

Q. And the extra man was never provided who would have freed you from your routine duties so you could exercise supervisory duties? Is that it?

A. Yes, sir, correct.

Mr. Bond: That is all.

#### Recross Examination by Mr. McRoberts:

Mr. McRoberts: Let me ask you one further question here: Q. In connection with your duties, Mr. Harris, in addition to the recommendations and corrections of the type which I asked you about a little while ago, did you also make recommendations about transfers of employees [fol. 820] from one work to another? A. Yes, we did.

Q. Whenever you found that by reason of an employee's injuries, perhaps, or just his ordinary characteristic, he was not suited in your opinion for the performance of that one type of work safely, you would recommend he be transferred to different work or a different department?

A. We usually made that recommendation—people who were incapable of doing their work by reason of a physical defect or something or other. But we had no authority to see that our recommendations were carried out.

Q. You didn't make the transfers yourself?

A. It was merely a recommendation.

Mr. McRoberts: That is all.

Mr. Bond: That is all, Mr. Harris.

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ROBERT M. POWELL

of lawful age, produced, sworn and examined, testified on behalf of plaintiffs as follows:

Direct Examination by Mr. Bond:

Q. Will you state your full name, please?

A. Robert M. Powell.

Q. And your age? A. Thirty-four.

Q. And where do you live?

A. 201 Hereford Avenue, Ferguson, Missouri.

[fol. 821] Q. I believe you were at one time employed by the defendant United States Cartridge Company?

A. Yes, sir.

Q. As a safety engineer? A. I was.

Q. Inspector first, I guess it was, was it not?

A. That is right.

Q. Exhibit A shows that you were employed to commence November 2, 1942, and terminated March 31, 1944. Is that correct? A. That is correct.

Q. Where did you go to get your job out there?

A. I went direct to the Administration Building on Goodfellow Avenue and talked to Mr. Strickland.

Q. And tell us what occurred between you and Mr. Strickland?

A. Mr. Strickland asked me if I had ever had any experience in safety work before, and I told him I had been. And then he said, "Well, we will give you a little training by putting you on with one of the other safety inspectors a few days before we can turn you over to a unit of your own." So I went around with another safety inspector for about three days before they gave me a unit of my own.

Q. Was anything said about terms of employment?

A. Yes, sir; Mr. Strickland said that I would start at a salary of \$225 a month, and the basic work week was forty [fol. 822] hours. However, the Government had requested we work a six-day week, and that is all that was said.

Q. Did he tell you the basic week was 40 hours?

A. That is what I recall.

Q. Did you get one of those booklets that I have introduced in evidence? A. Yes, sir. I did.

Q. Now, to what production unit were you assigned?

A. The first [on], I believe, was about 102 or 104.

Q. Tell us what your duties were in that department.

A. As I started out I accompanied the other inspector around and observed his working, which was patrolling the entire building, and it has three supplemental buildings, the primary insert loading and magazine. And I followed him on his tour of the building and also in the first-aid station where he wrote up the accident reports. And as we went around he explained to me what to watch for in the way of poor housing and unsafe acts on the part of the employees, and unsafe conditions.

Q. And these general instructions that I read in the record this morning as having been given to all safety engineers, did you get those general instructions? A. Yes, sir.

Q. And they were the instructions on which you operated? A. That is right.

[fol. 823] Q. When you observed any infraction of safety rules, what did you do?

A. We informed the foreman directly over that employee, in case of an unsafe act or an unsafe condition.

Q. You say you would notify the foreman over the employee who was guilty of the infraction of the safety rule, who would make the correction? Is that right? A. Yes, sir.

Q. Then would you include it in any report that you made?

A. Yes, sir, we were required to make a report of the infractions as we observed them during the working shift, and they would go to our safety supervisor who would in turn insert them in a report that the safety department got out to the department managers.

Q. This Exhibit H is such a report, is it? A. Yes, sir.

Q. Now then, something has been said about the safety men having authority in cases of emergency or threat of death or serious injury, to take some corrective action.

What have you to say about that? Were you encouraged to act in that way or discouraged?

Mr. McRoberts: Object to the form of the question. It is an opinion and conclusion of the witness as to what he was encouraged to do.

Mr. Bond: I will leave it "encouraged."

[fol. 824] Mr. McRoberts: Object to the question as it is. He has his written instruction, he can tell whether he followed his instructions or whether he was penalized for not following his instructions, as the other witness did.

Q. The question is with reference to that part of your instructions whereby emergency such as where an employee is engaged in some operation where death or serious injury may result? What have you to say about that part of your instructions, and your practice under it?

Mr. McRoberts: Object to that as too vague and too general. I think if you ask the question the witness can answer, and I can object.

Mr. Bond: I think the question is all right.

The Court: Objection sustained.

Q. Did you have occasions come up while you were a safety inspector where you acted under that instruction?

A. I don't recall any, sir.

Q. All the infractions you noted or handled under the general instruction— A. Yes, sir.

Q. You reported them to the foreman for correction and for your supervisor for information?

A. Possibly with one exception, where you see an employee running, or something like that, and you caution him to stop running because he might have an accident. / [fol. 825] Q. But except for that no occasion came up where you acted under the exception?

A. No, sir. Although the bulletin there told us we should have that authority in case of chance of death or a serious accident, my recollection is we had a meeting in the Safety Department during the working shift where another safety inspector had taken upon himself to shut off a line of machines, and the meeting was called to make it a little more clear to us, that while the bulletin offered us so much authority we were not to do that because of

disrupting the production and we should see the foreman or general foreman before taking any action of that sort.

Q. When and where did that take place?

A. The meeting took place shortly after the incident. I point out a meeting took place in the safety department quarters which were in the fire-engine house, I believe, on the premises.

Q. I don't want to duplicate what I have been over today. You heard the description which was given here by the first witness as to the plant? A. Yes, sir.

Q. In a general way, is that your recollection of it?

A. That's right, yes, sir.

Q. And the organization of the safety department, tell [fol. 826] us how that was?

A. Mr. Strickland was supposed to be the director and head of the safety department and had two or three assistants, the number varying at different times due to trouble in the department I presume, and they had supervisors over each shift that were responsible for the different men in the units during that shift.

Q. And the safety inspectors or safety men were under those men? A. Yes, sir.

Q. At the bottom? A. Yes, sir.

Q. And was that a plantwide organization? A. Yes, sir.

Q. And the instructions under which the safety men operated, were they general?

A. To my knowledge they were, yes, sir.

Q. And the daily duties that you have described here, were they typical of those performed by all safety engineers?

Mr. McRoberts: Object to that, if Your Honor please.

The Court: Sustained.

Q. Did you say what department you were in?

A. I was in the safety department.

Q. I mean what unit?

A. I was originally I believe in 102 or 104, later being [fol. 827] transferred to one or two of the other units.

Q. Different from the unit that Mr. Harris was in?

A. Correct, yes, sir.

Q. But nevertheless, you had these same general instructions? A. Yes, sir, I did.

Q. And your duties in the unit you were in were the same kind that he has told about here?

A. Yes, sir, that is correct.

Mr. Bond: That is all.

The Court: Announce an adjournment until tomorrow morning at ten o'clock.

Thereupon, at 4:00 P. M., July 8, 1946, an adjournment was taken to 10 A. M. July 9, 1946. The proceedings were then resumed as follows:

Mr. McRoberts: I would like to recall Mr. Harris for a few questions.

Mr. Bond: Why don't you finish with Mr. Powell? I finished the direct examination of Mr. Powell last night.

Mr. McRoberts: It doesn't make any difference. I have some papers on Mr. Harris. If it is convenient I can get rid of them and get them back into the file?

Mr. Bond: Well, all right.

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### FRANK N. HARRIS

previously sworn on behalf of plaintiff, recalled for [fol. 828] further cross examination, testified as follows:

#### Recross Examination by Mr. McRoberts:

(Five papers are marked "Defendant's Exhibits 2, 3, 4, 5 and 6," respectively.)

Q. (Mr. McRoberts) Mr. Harris, from time to time during your employment as a safety engineer, you made application for pay during absence from your work, did you not? A. I imagine I did.

Q. I will show you Defendant's Exhibit No. 2 and ask you if that is your signature which appears on that paper?

Mr. Bond: Now, if Your Honor please, I object to any interrogation in reference to that paper which has been marked and identified as an exhibit and exhibited to him for the reason that what it purports to be is a company form of application for a leave of absence on account of

illness in which they characterize him as an exempt employee, which is the very point at issue in this case. That is not a matter that can be concluded either by the company's classification or by this agreement on his part. If under the Fair Labor Standards Act he is not within the Administrator's definition, no contract or consent on his part can make him come within that limitation, and it is wholly immaterial whether he did or did not sign such an application or ~~they even made an agreement~~ with him as to his classification. It is a matter of law which may not be determined by agreement. If employees could contract [fol. 829] with their employer as to what their status was there would never be any benefits open to them under this act, because they would always take such agreement. Therefore, I say it is irrelevant and immaterial.

Mr. McRoberts: I think it is admissible, Your Honor, as bearing upon the veracity of the witness and his contention as to what the terms and conditions of his employment actually were.

Mr. Bond: I can't see its bearing on the question of veracity or any statement he has made.

Mr. McRoberts: He made a statement, as I understand it, that he was employed and relied upon the booklet that Judge Bond introduced in evidence. The statement about the working hours being 40 hours per week for these parties who were not exempt under the Fair Labor Standards Act.

Mr. Bond: No, sir, the just benefits become as having gone to him and other certain parties as admission against interest.

The Court: Objection sustained.

Mr. McRoberts: May we make our offer on this? May I have him identify his signatures?

The Court: All right.

Q. (Mr. McRoberts) Is that your signature on each of defendant's exhibits 2 to 6 inclusive? A. They are.

Mr. McRoberts: We offer in evidence Defendant's Exhibits 2 to 6 inclusive.

Defendant's Exhibit A

D.P. Ex. 2 704

ORIGINAL	
NO.	DEPARTMENT HEAD: PAYROLL DEPT. DIVISION HEAD: PAYROLL DEPT.

THE UNITED STATES CARTRIDGE CO.  
ST. LOUIS, MISSOURI

**APPLICATION FOR PAY  
DURING ABSENCE  
SALARIED EMPLOYEES**

DATE	12-4-57
BADGE NO.	14201

EMP. DATE 11-29-42 EXEMPT EMPLOYEE  NON EXEMPT EMPLOYEE   
ABSENT FROM 11-29-42 TO 11-30-42 INCL. AMOUNT OF TIME APPLIED FOR 8 HRS.

I HEREBY CERTIFY THAT I WAS ABSENT  
FROM WORK ON THE DATES SHOWN ABOVE DUE TO THE FOLLOWING REASON:

ILLNESS OR OUTSIDE INJURY  PERSONAL (REHAB),  COMPENSABLE INJURY

OCCUPATIONAL DISEASE

SIGNED J. R. Morris

EMPLOYEE

*Exempt  
Employee  
Entitled*

12-4-57

FOR PAYROLL  
DEPARTMENT  
USE ONLY

TIME ALLOWED PRIOR TO JUNE 1, 1942  
TIME ALLOWED SINCE JUNE 1, 1942  
TIME ALLOWED THIS ABSENCE  
TOTAL TIME ALLOWED

HANDED ON FORM COPY OR STAMP

*Chas. J. Berry*

PATRICK J. BURTON



12-4-57

323 Defendant's Exhibit 4.

EMPLOYEE
THE DEPARTMENT HEAD, GENERAL OFFICE SALARIED EMPLOYEE

THE UNITED STATES CARTRIDGE CO.  
ST. LOUIS, MISSOURI  
APPLICATION FOR PAY  
DURING ABSENCE  
SALARIED EMPLOYEES

W. F. S.

EMPLOYEE
EMPLOYEE SALARIED EMPLOYEE
EMPLOYEE SALARIED EMPLOYEE

DATE 2-12-42

ABSENT FROM SEPT 10 TO 16  
J. J. Harris

EXCUSED EMPLOYEE  NON EXCUSED EMPLOYEE   
INCL AMOUNT OF TIME APPLIED FOR 16 HRS

I HEREBY CERTIFY THAT I WAS ABSENT  
FROM WORK ON THE DATES SHOWN ABOVE DUE TO THE FOLLOWING REASON:

ILLNESS OR OUTSIDE INJURY  PERSONAL (EXCUSED)  COMPENSABLE INJURY   
OCCUPATIONAL DISEASE

SIGNED J. W. Johnson

EMPLOYEE

PAYMENT RECOMMENDED J. J. Matherne

FOR MANAGER, SUPERVISOR OR DEPT. HEAD J. J. Matherne

{ TIME ALLOWED PRIOR TO JUNE 1, 1943 1.6 HRS.  
TIME ALLOWED SINCE JUNE 1, 1943 1.1 HRS.  
TIME ALLOWED THIS ABSENCE 2.0 HRS.  
TOTAL TIME ALLOWED 58.3 HRS.  
HANDLED ON FORM G-8 OR G-94, NO. 583

m-j schellen  
PAYROLL DEPARTMENT

X O. Roberts APPROVED  
DEPT. HEAD

Note

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[fol. 834] Mr. Bond: Same objection as heretofore stated.

The Court: Sustained.

Mr. McRoberts: That is all.

Redirect Examination, by Mr. Bond:

Q. Mr. Harris, in reference to this statement you made on cross examination yesterday in reference to having been disciplined concerning a certain incident; was there any record made by the company of that incident?

A. Yes, there was.

Q. Do you have a copy of it? A. I do not.

Q. What is the nature of that record?

A. Well, I believe that the form number for that record was classified as an IRP No. 43.

Q. And in what file would that be?

A. Well, I presume that the company has a file of IRP 43.

Mr. McRoberts: Object to the presumptions, if your Honor please..

Q. Did you at the time receive a copy of it? A. I did.

Q. And you do not have it? A. No, I don't.

Q. Did you state when this incident occurred, yesterday?

A. I didn't. I don't think I did. I don't recall definitely when it did occur, but I think it was—I think it occurred in the summer or spring of 1943.

Q. And what was the reason that you were disciplined?

Mr. McRoberts: I think the witness testified to that very specifically yesterday.

Mr. Bond: I don't think so, Your Honor. It was in cross examination, and I didn't ask him about it in redirect.

Mr. McRoberts: Witness stated very definitely what the reason was, yesterday. The only reason to ask him to go into it again would be an attempt to impeach his own witness.

Mr. Bond: No, sir, I didn't get it clear, Your Honor, and I don't think the record has it clear. I am not suggesting anything to him..

A. As I recall the incident, I was on the night shift and I entered the Building 105 and discovered an employee in that building with safety glasses which contained no lens. So I went to the foreman and asked that he have the man removed and send over to the safety store for glasses, which he said he would do. I went on about my work.

Q. By foreman, you mean the employee's foreman?

A. That is correct. I went on my duties patrolling other buildings and returned in, I think, about two hours, and I found the man still on the job, still with safety glasses with no lens. And I went back to the foreman and asked him why he had not removed the man and sent him over [fol. 836] to the store, and it had been raining very hard. He said he didn't take him off the job because of the rain and it was then near the close of the shift and he refused to send him over saying there was only a few minutes left to go. So I reported the incident to my supervisor. And I was later on called in by an assistant safety director and told that I was being given a three-day layoff for failing to see that the man was removed from the building.

Q. Did you have any authority personally to remove him?

Mr. McRoberts: Just a moment. Object to that.

The Court: Sustained.

Q. Is there any other fact in reference to this matter that you haven't stated?

A. Only one I think. When I was told that I was going to be laid off for three days, they gave me the customary form for that purpose, which is an IRP 43, which requires the signature of the individual who is being penalized. And that, of course, is a matter of record in the company files.

Q. Without stating what it was, I will ask you as a fact whether or not that IRP, whatever it is you described, states the reason for your layoff? A. I think it does.

Mr. Bond: I now ask Counsel to produce that record before this trial ends.

Mr. McRoberts: Your Honor please, the place where that record would be is in the personnel file of this witness [fol. 837]. We have a personnel file of this witness, we have an IRP which is a disciplinary action ticket on

another transaction. We do not have any disciplinary action on any such transaction as witness describes. If it is possible to locate that through other files in the company we will endeavor to do so, but I am sure you realize the difficulties involved there with a total of eighty odd thousand employees out there, and the plant shut down and these files in storage.

Mr. Bond: I think with the definite description that the witness has given of the surrounding circumstances and the character of the record, that the controller ought to be able to locate it, Your Honor.

The Court: I think so.

Mr. Bond: I think that is all.

Recross Examination, by Mr. McRoberts:

Q. Will you state the name of the assistant supervisor who gave you this IRP 43?

A. I can't recall his name. I can describe him to you. He was a short, stocky man who I understand left the service of the company shortly thereafter and went in the East some place with another large concern.

Mr. McRoberts: That is all.

Mr. Bond: That is all.

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[fol. 838] ROBERT M. POWELL,  
previously sworn on behalf of plaintiff, recalled for further  
cross examination, testified as follows:

Cross Examination by Mr. McRoberts:

Q. Mr. Powell, you were hired in the plant as a safety engineer, were you not, or safety inspector? A. Yes, sir.

Q. And I believe you advised the company—

Mr. Bond: Could I interrupt just a moment? Mr. Harris comes up and tells me that he believes that man you asked him to identify was a Mr. Sewell. That is his best recollection now.

Q. (Mr. McRoberts) Mr. Powell, you advised the company in your application that you had done safety work before, did you not? A. I don't believe so.

Q. I will show you a copy of a paper which purports to be your application. Does that bear your signature? I direct your attention to the statement of your experience.

A. Well, this is worded in such a way that it might be ambiguous.

Q. You think safety work is ambiguous?

A. If you are referring to the part which says "common safety work", I didn't actually do the safety work.

Q. When you were employed, were you employed to go to work on a day shift?

[fol. 839] A. I believe so. It was my understanding it was going to be all day work when I was employed.

Q. You were told you should report to work at 7:30 A. M. A. That is correct.

Q. And that you would work until four o'clock P. M.?

A. Yes, sir.

Q. That you would have a half hour off for lunch?

A. Well, that wasn't brought out very clearly. I assume I had lunch time, that is correct.

Q. And you were told you would work six days a week?

A. As I stated yesterday.

Q. I am asking you now, were you told that you would work six days a week from 7:30 in the morning until four in the afternoon?

A. I was told the Government requested that we work six days a week.

Q. And therefore that you would work six days a week?

A. Yes, sir.

Q. And you were told that your salary would be \$225 per month to start? A. That is right.

(A paper is marked "Defendant's Exhibit 7")

Q. Mr. Powell, were you also told that in addition to those hours which I named, that you might be subject to call in the event of emergencies beyond those hours?

[fol. 840] A. Yes, sir.

Q. When you were employed, did you sign a notice of employment for the company? A. I would like to see that.

Mr. Bond: I make the same objection to that, Your Honor. They have undertaken to put in a statement in

the form that he is an exempt employee. It isn't binding on the employee, it isn't in accordance with the Fair Labor Standards Act.

The Court: Objection sustained.

Q. Is that your signature on Defendant's Exhibit 7?

A. Yes, sir.

Mr. McRoberts: We offer in evidence Notice of Employment which sets forth, if Your Honor please, that he was exempt under the Fair Labor Standards Act.

Mr. Bond: Same objections.

The Court: Sustained.

Mr. McRoberts: Your Honor please, in order to save time with this witness and possibly other witnesses, we have other applications for pay during the absence of salaried employees, signed by this witness and also signed by various other plaintiffs, similar in form and wording and purport to the ones which we have identified and had Mr. Harris identify. Now without cluttering up the record by offering each of these documents separately, may it be understood that the same ruling would apply for each case?

[fol. 841] The Court: The same ruling would apply?

Mr. Bond: Yes, sir, same objection and same ruling.

The Court: Yes, sir, the same objection and ruling will apply.

Q. Mr. Powell, I will show you a document which has been identified as "Plaintiff's Exhibit F," and ask you if you were furnished with a copy of these general instructions? A. Yes, sir, I was furnished with copies.

Q. And you were told these were the instructions to you as to how you should perform your duties as a safety inspector or safety engineer? A. Yes, sir.

Q. And generally speaking you abided by and followed these instructions as set forth in the exhibit?

A. I might say I abided by it until we couldn't exercise everything that was said in print.

Q. But under these instructions it was your duty from time to time to instruct employees with respect to safety matters, was it not?

A. Well, it was rather a hot and cold proposition. The director of the safety department seemed to change policy from time to time. At the time we started we were permitted to talk to employees and supposedly instruct them occasionally if the danger was present. Later on we were told not to contact the employee direct at all.

[fol. 842] Q. As a matter of fact, you instructed employees how to do their work safely all the way through your employment, did you not?

A. As I say, it was a hot and cold thing. There were times when we did and there were times when we didn't.

Q. When did your employment terminate?

A. March 31, 1944.

Q. Well, here in February of 1944 you were still instructing employees about safety matters, were you not?

A. I don't like the word "still". You may say at that time we were.

Q. Mr. Powell, I will show you a report which purports to bear your signature. Is that correct? A. That is correct.

Q. And I call your attention to the fact that in this report you state, "Foreman was instructed on proper procedure for future reference." Is that correct?

A. That is correct.

Q. On November 27, 1942, you report with reference to an accident to a female employee that you instructed her to keep gloves on and had foreman show her proper way to grasp cases." Is that correct? A. That is correct.

Q. And on January 31, 1944, you suggested to employee that she try using her left hand for these operations in [fol. 843] the future. Is that correct? A. That is correct.

Q. And on February 11, 1944, you state, "Safety engineer had employee demonstrate how he lifted these cartons, but this employee was not using the proper method. And I instructed him and notified the foreman to also watch him and reinstruct him if necessary." Does that correctly describe what you did? A. Yes, sir.

Mr. Bond: I think the witness has a right to an explanation if he wishes to make it.

Mr. McRoberts: I am not objecting to it.

A. I would like to say the reports you are using as examples are in connection with hospital cases, I believe,

and not merely the ordinary run of minor accidents which did not require reporting.

Q. As a matter of fact, your instructions were that whenever any accident occurred, no matter how small, the employee was to report to First Aid? A. That is correct.

Q. And one of your duties was to continually instruct the employees to that effect and see that they understood?

A. That was the duty of the foreman to instruct them to report to First Aid.

Q. You undertook to instruct them to that effect constantly, didn't you?

[fol. 844] A. No, sir, I couldn't say that.

Q. Well here, for example on February 8, 1943, you advise Mr. Loyet, who was the employee in the case, and his foreman that all accidents no matter how minor must be reported immediately to First Aid Station.

A. I don't think that bears out your statement we do it constantly. We did when it required it.

Q. If I may, I will read from some more of the daily reports of yours and the action which you took. Will you tell me in which case it is correct?

Mr. Bond: Are you reading from accident reports?

Mr. McRoberts: Daily accident reports. These are not basically accident reports, this is the hospital report that accompanied the accident report that you are looking at. What I am reading from is document entitled Safety Inspection Report, bearing a date and bearing your signature as safety engineer, and that is a report that you make after accidents have occurred which cause injuries.

A. Which cause hospitalization in the plant.

Q. All right, 1. Suggested to employee that he familiarize himself with machines and attachments, and work with care at all times. Had sharp hook replaced with blunt one immediately.

Another one. Had plumbers and porters correct condition immediately, but couldn't locate any leakage. Cautioned employee to walk more carefully also.

[fol. 845] A. That is right.

Q. Had a metal guard approximately 5 x 10 inches added to the original guard to cover the gap and prevent recurrence. This guard installed 7/30/43. Four to twelve shift.

Cautioned other employees James Whitaker badge 23849, who let switch swing back and hit the patient. Also advised foreman to caution all other users of switch. Had switch raised to a height of about 6 feet one inch. Talked to employee in the presence of his immediate foreman, Vanmeter, and made definite recommendation that he go about his duties, a little more slowly in the future and be very careful in walking to work and around machines.

And then at the foot of the report, Safety engineer regards this man as a potential hazard working around machines and has asked his foreman to observe him carefully, and recommends that he be transferred to a less congested area if he doesn't follow suggestion to slow down or be terminated before a serious loss of time and accident develops. A. Correct.

Q. Another one. This employee is a chronic complainer about her health and frequents First Aid Station for aspirin, citric carbonate, and so forth. Has complained of headaches frequently in the past. Believe her to be a hazardous employee and recommend she never be allowed to be a machine operator. A. That is right.

[fol. 846] Q. And from time to time you would recommend different types of guards and safety devices be installed, didn't you?

A. Yes, sir, mostly as a result of these hospital accidents.

Q. And then sometimes you would conclude that no guard should be applied and would report accordingly?

A. Well now, I can't say that offhand.

Q. Let me read you this one. January 7, 1943. Discussed with foreman. No previous similar accident, no place for guard. Only carelessness would result in recurrence. Is that correct? A. Yes, sir.

Q. And you recommended that disciplinary action be taken from time to time, did you not?

A. There might have been occasions of that.

Q. Well, let me read you this one: Employee's foreman was apprized of the full details of the accident and will discipline employee who [caused] the accident, Violet Rains, badge 52802, Operator Department 238. Is that correct?

A. That doesn't say that I recommended it, it says he will do it.

Q. I read that correctly, didn't I? And that was your report? A. I believe you did. I didn't read it carefully.

Q. Well, follow these, please. Here is one, 2 10 44. Safety Engineer requested disciplinary action and employee was issued Form TRP 43 and reinstated.

[fol. 847] A. Correct.

Q. 3/21/33, instructed employee to report any accident immediately in the future. Failure to do so would draw disciplinary action. A. Correct.

Q. 8/9/43, I believe that the expanded metal guards through which these particles fly out of the machines are really inadequate protection. I recommend plexi glass guards be installed to replace present. In this connection the safety engineer has contacted foreman, general foreman of this department, the assistant superintendent and superintendent of the building, the unit plant engineering department representative, the unit millwright foreman and Mr. Duncan of the Safety Engineering Department. Tentative plans are being considered for installation of plexi glass guards or other serviceable type of guard.

A. Correct.

Q. 1/23/43, I took Foreman Barth and General Foreman Broadshaw back to the scene and we determined that there should either be a hand tool made for removing the plates in the future, or that the sliding door should be equipped with a device to actuate the use of the pedal used to engage the press. A device is needed to permit the pedal to take effect of engaging the press only when this sliding door is closed, and to prohibit the engaging when sliding door is open. We will take this up with the engineering [fol. 848] department. A. That is right.

Q. Mr. Powell, would you say that this is a fair description of the job which you performed out there, and I am going to read this sentence by sentence and, if you will, check with me each sentence.

A. May I suggest, wouldn't it be better to read it all the way through, as one sentence may be related to the other one further along?

Mr. Bond: I don't think that the witness should be asked to state a conclusion on a statement that he has prepared. Let him ask him for the facts.

ORIGINAL	
TO:	DEPARTMENT HEAD: PAYROLL DEPT.: DIVISION HEAD: PAYROLL DEPT.

THE UNITED STATES CARTRIDGE CO.  
ST. LOUIS, MISSOURI

**APPLICATION FOR PAY  
DURING ABSENCE  
SALARIED EMPLOYEES**

A.P. E. 3

DATE	2-13-42
BADGE NO.	14201
DEPT.	524
CLOCK	280

EMP. DATE 2-13-42 EXEMPT EMPLOYEE  NON EXEMPT EMPLOYEE   
ABSENCE FROM 2月 13日 TO 2月 14日 INCL. AMOUNT OF TIME APPLIED FOR 5 1/2 HRS.

I, J. J. Roberts, HEREBY CERTIFY THAT I WAS ABSENT  
FROM WORK FOR THE DATES SHOWN ABOVE DUE TO THE FOLLOWING REASON:

ILLNESS OR OUTSIDE INJURY  PERSONAL (EXCUSED)  COMPENSABLE INJURY

OCCUPATIONAL DISEASE

SIGNED: J. J. Roberts

EMPLOYEE

PATRON  
RECOMMENDATION

MAN. APPROVAL OR DEPT. HEAD

FOR PAYROLL  
DEPARTMENT  
USE ONLY

TIME ALLOWED PRIOR TO JUNE 1, 1942

TIME ALLOWED SINCE JUNE 1, 1942

TIME ALLOWED THIS ABSENCE

TOTAL TIME ALLOWED

HANDED ON FORM G-2-20 GP-20 NO. 11734

1-6 HRS.

1-6 HRS.

5-5 HRS.

6-1 HRS.

L J. Roberts  
PAYROLL DEPARTMENT

John Roberts  
APPROVED  
MAN. APPROVAL OR DEPT. HEAD

**Defendant's Exhibit 5.**

DEEx 5

ORIGINAL		THE UNITED STATES CARTRIDGES CO. ST LOUIS, MISSOURI	
TO  DEPARTMENT HEAD: PAYROLL DEPT. DIVISION HEAD: PAYROLL DEPT.	<b>APPLICATION FOR PAY DURING ABSENCE SALARIED EMPLOYEES</b>		
2/13/42 ✓		DATE F-11-42	BADGE NO. 15771
EMP DATE ABSENT REG 6.7.42		EXEMPT EMPLOYEE <input checked="" type="checkbox"/>	NON EXEMPT EMPLOYEE <input type="checkbox"/>
		INCL. AMOUNT OF TIME APPLIED FOR 24 hrs.	
I, <u>J W Harris</u> , HEREBY CERTIFY THAT I WAS ABSENT FROM WORK ON THE DATES SHOWN ABOVE DUE TO THE FOLLOWING REASON:			
ILLNESS OR OUTSIDE INJURY <input checked="" type="checkbox"/> PERSONAL (EXCUSED) <input type="checkbox"/> COMPENSABLE INJURY <input type="checkbox"/> OCCUPATIONAL DISEASE <input type="checkbox"/>			
SIGNED <u>J W Harris</u>	EMPLOYEE	PAYMENT RECEIVED <u>John M. Jackson</u>	RECEIVED RECEIVED RECEIVED RECEIVED
TIME ALLOWED PRIOR TO JUNE 1, 1942 _____ HRS. TIME ALLOWED SINCE JUNE 1, 1942 _____ HRS. TIME ALLOWED THIS ABSENCE _____ HRS. TOTAL TIME ALLOWED _____ HRS. HANDLED ON FORM G-1000 REV. NO. 1-42			
APPROVED <u>O'Kaptret: B</u>			

**FOR PAYROLL  
DEPARTMENT  
ONLY**

TIME ALLOWED PRIOR TO JUNE 1, 1941  
TIME ALLOWED SINCE JUNE 1, 1941  
TIME ALLOWED THIS ADDRESS  
TOTAL TIME ALLOWED  
HANDLED ON FORM 5010-22 REV. 1, NO.

Officer's Book

Q. I will ask you if this is a fact, that this is a part of your job out there; Regularly inspects the entire property in his area for the purpose of eliminating safety hazards of all kinds; inspects machinery, lighting, floors, exit and storage materials. A. Right.

Q. Recommends changes such as additional machine guards, additional safety devices, new storing methods and new types of equipment. A. Yes, sir.

Q. Checks manual movements of employees, pointing out unsafe practices to the supervisor? A. Correct.

Mr. Bond: Does that mean your supervisor?

A. No, sir, employees.

[fol. 849] Q. Using his knowledge of safety practices, recommends changes calculated to decrease working hazards.

A. Right.

Q. Makes reports recommending general safety procedure not connected with a particular accident.

A. That is right.

Q. Holds meetings of unit and safety [committees] promoting adherence to safety regulations through employee cooperation.

A. I can't agree with that. That was a suggestion that wasn't carried out.

Q. Sees that injured employees receive immediate attention and care.

A. Well, yes, sir, we did that. The employees' foreman was the one who was obligated to see that the employee got into the First Aid Station. After the employee was referred to the First Aid Station we discussed the case with the nurse on duty, and if there was a doubtful case a nurse would sometimes ask us how it looked to us, if it looked like a hospital case, or something like that.

Q. Did you or not report every accident suggesting preventive measures?

A. That is correct. That didn't apply in every accident because that calls for numerous things, that is actually the result of carelessness or a breakdown of machinery, or careless act on the part of another employee. That calls for an accident even if an employee got a splinter in his [fol. 850] finger, that is an accident report.

Q. Next, advise all employees, with approval of departments concerned, in proper use of safety equipment.

A. Equipment methods there, that wasn't carried out.

Q. Going back to the percentage of time spent in the different types of work which I have just mentioned here, I will withdraw that. Did you perform any other duties other than the ones I have just asked you about?

A. That covers a lot of ground.

Mr. Bond: That calls for a conclusion. He stated yesterday in detail what his duties were, Your Honor. I don't think he should be asked to draw the conclusion as to whether these questions here cover that whole field or do not. The testimony is before the Court.

The Court: He may answer.

A. All right, other duties in a case of lost time, accident where an employee was taken—was taken from our plant to an outside hospital, at one time we were required to either go there by our own means of transportation or to accompany the patient to the hospital, and wait there even though it was beyond our regular working hours, and then writing that accident report so it would be available at the department.

Q. That was your job, to make a report of every accident? A. That was an extra.

Q. Was there any other type of work that you did that you can now recall other than what has been covered?  
[fol. 851] A. Yes, sir, in some instances where an employee had an accident which restricted the capability to walk into the First Aid Station, we were sometimes called upon to help place the employee on a stretcher and carry him to the First Aid Station.

Q. Can you tell us any other duties you performed out there?

Mr. Bond: That is not a question of duties. He told yesterday what he did in detail. Those are just generalizations, they do not cover the actual detail of inspecting, patrolling and reporting. I think that it is unfair to this witness to question him that way.

The Court: He may answer.

(Last preceding question was read)

Q. Just in a general way.

A. There might have been others that I can't recall, but getting to the stretcher deal, it was our duty to see that the stretcher was returned to its compartment.

Q. Can you think of anything else? A. Not offhand.

Q. Going back to the question as to the amount of your time that you were called upon to spend in these various types of work, let me take up this first one: Did you regularly inspect the entire property in your area for the purpose of eliminating safety hazards of all kinds, inspect machinery, lighting, floors, exits and storage of materials? Would you say that 30 per cent of your time is a fair estimate [fol. 852] mate for your time spent in that work?

Mr. Bond: Object. It is speculative and guess work.

The Court: Sustained.

Q. Will you tell us how much time you spend in that work?

Mr. Bond: I submit the same objection. They have reports from him as to what work he did, and if they wanted to devote any time to percentage, they are the best evidence for accuracy.

The Court: He may answer.

A. There is no way I can answer that accurately.

Q. Your best judgment.

A. Our days vary. Some days you have an excessive number of accident reports to write up which require a great deal of your time. Other days when they run lighter you have more time to devote to patrolling and surveying the building and safety conditions.

Q. You don't feel that you can attempt to express any percentage of figures, any average amount of time spent on those various things? A. No, sir.

The Court: Announce a 5-minute recess.

Thereupon at 11:35 A. M., July 9, 1946, a brief recess was taken. The proceedings then were resumed as follows:

Mr. McRoberts: That is all.

Redirect Examination by Mr. Bond:

Q. Mr. Powell, I believe last night in asking you in detail your view in reference to reporting of safety violations, [fol. 853] Mr. McRoberts showed you a lot of reports. I will ask you to what they referred?

A. The reports Mr. McRoberts has shown me only refer to hospital reports as a result of accidents where the employee was referred to the plant hospital, and they are quite different from the ordinary accident or infraction report.

Q. What were they? And in case of an accident where an employee was referred to the First Aid room—and as you go along differentiate where there was difference between the procedure in an accident and infraction case.

A. In the accident in his cross examination; when an accident occurred we would not be around the scene of the accident and would periodically check into the First Aid Station to see what accidents had been reported. We would take the slip from the nurse and go out, and it was our instructions to contact the employee to determine how the accident was caused, then write up the accident report. In case of a hospitalization case we not only had to determine how the accident was caused but were required to file a recommendation and also instruct the employee to the best of our ability to help prevent a recurrence. Now then, on the infraction report, we were not to talk to the employee at all, it developed into a process of noting the employee's badge number on our record and turning that into his report with a report of what the infraction consisted of and turning that in at the end of the day.

[fol. 854] Q. So your duty to make observations to the employee, it only involved upon you to do that in case of accidents? A. That is correct.

Q. And in case of infraction that was not part of your duty? A. No, sir.

Q. And your reports in the case of infractions of safety rules, relaying of those reports to your supervisor or director, I will ask you if they would be along the form of

the same general nature as Plaintiff's Exhibit H which has been introduced?

A. Yes, sir, they would be approximately the same.

Mr. McRoberts: May I clear the record on this? This is not a review that you or any safety engineer made, this Plaintiffs' Exhibit H.

The Witness: It is a composite report that all the engineers on a certain shift made.

Mr. McRoberts: But this particular document is a report which one of the supervisors would make to the head of the department?

The Witness: May I identify that, please?

Mr. Bond: That is partial identification, but identify it further because that was sent to all engineers.

A. This gentleman Kemp, who referred it to Mr. Strickland, got this information from the engineers on the shift.

[fol. 855] Q. (Mr. Bond) Who was Mr. Kemp?

A. Supervising and safety engineer.

Q. And the document was submitted to the engineer?

A. Yes, sir, and the management.

Mr. Bond: Any such document you won't find in the—

Mr. McRoberts: Well, the document sent out.

Mr. Bond: That is right.

Q. (Mr. Bond) Now, going back to these reports of accidents, those are recommendations that he made in certain cases of these hospital cases. Did you have any voice in putting those into effect? A. None whatsoever.

Mr. Bond: I believe that is all.

Mr. McRoberts: That is all, Mr. Powell.

Q. FLETCHER JOHN EIFERT,  
of lawful age, produced, sworn and examined, testified on  
behalf of plaintiffs as follows:

Direct Examination by Mr. Bond:

Q. Will you state your full name, please?

A. Fletcher John Eifert.

Q. Are you married or single? A. Married.

Q. Would you mind stating your age? A. Forty-six.

[fol. 856] Q. What is your occupation?

A. I work for the railroad.

Q. Now? A. Right now I am on a furlough.

Q. Were you an employee of the United States Cartridge  
Company? A. Yes, sir.

Q. During the period that they operated this safety  
department out there? A. Yes, sir.

Q. In what capacity were you employed?

A. Railroad yardmaster.

Q. And prior to being so employed what experience did  
you have as a yardmaster in the handling of shipments?

A. As an actual yardmaster I had no experience.

Q. What was your railroad experience?

A. Twenty-six years of various departments in the rail-  
road.

Q. You worked twenty-six years? A. Yes, sir.

Q. In various railroad departments? A. Yes, sir.

Q. Sometimes with the Terminal, was it?

A. All the time with the Terminal.

Q. With the Terminal Railroad Association? A. Yes, sir.

Q. Now then, in the first place, give us some descrip-  
[fol. 857] tion of the facilities out there for handling  
inbound and outbound freight?

A. Well, we had a receiving yard where all inbound and  
outbound freight was placed for movement into the plant.

Q. Were there any switch tracks?

A. The plant was covered with switch tracks to all the  
main buildings.

Q. Any switch engines? A. Two.

Q. Any receiving stations to receive inbound freight?

A. All the buildings had loading and unloading docks.

Q. The loading is for outbound freight? A. Yes, sir.

Q. Was there any loading and unloading equipment out there? A. What manner of equipment?

Q. Well, didn't you sometimes in loading heavy articles have assistants, oh whatever they are?

A. The men that loaded the cars had lifts and trucks, and so forth.

Q. What was your job up there?

A. My job was to see that the cars were spotted at the respective buildings upon orders from my superior to what buildings they wanted them.

Q. And did you have general supervision over the yard?

A. I might say, yes, sir.

[fol. 858] Q. Now, then, whose employees maintained those facilities? A. U. S. Cartridge Company.

Q. Were you a U. S. Cartridge Company employee?

A. Yes, sir.

Q. And in reference to handling outbound freight, whose employees handled the ammunition out of the plant to these shipping facilities? A. In the cars, you mean?

Q. No, sir, handling. Where was the ammunition brought from in order to be shipped?

A. Brought down out of the building and loaded in the cars at the loading dock.

Q. Whose employees did that?

A. To my knowledge the Cartridge Company.

Q. And describe the way in which they were loaded into these cars!

A. At various times; going around the plant, they were put in there by hand or with conveyor or lift trucks.

Q. Were they blocked or braced? A. Yes, sir.

Q. And this same crew did that, I suppose?

A. Carpenters did that.

Q. Whose carpenters?

A. To my knowledge the Cartridge Company carpenters.

Q. And after the ammunition was brought down and [fol. 859] loaded into the cars as you describe, were these cars sealed? A. Yes, sir.

Q. Under whose supervision were they sealed?

A. The army.

Q. United States Army? A. Yes, sir.

Q. Now then, as yardmaster did you receive any billing covering the outbound movement of that ammunition?

A: The billing was sent to my office and passed through my hands, and in turn turned over to the railroad.

Q. Did you exercise any—did you perform any service in reference to that billing? A: What would you call it?

Q. Did you examine it or check it? A. That is right.

Q. For what purpose did you examine it and check it?

A. For correctness of the car number and initials.

Q. Did you examine the [routeing]?

A. At times, yes, sir, if I noticed a discrepancy.

Q. And by discrepancies in [routeing], what do you mean?

A. Sometimes a billing would come to my hands destined to Texas. May [may] [musroute] like N. P. or T. P. A railroad man would know the N. P. doesn't connect with the T. & P.

Q. Would you make that correction?

A. No, sir, I had no authority to make it.

[fol. 860] Q. What did you do?

A. Army transportation man.

Q. You would call it to his attention? A. Yes, sir.

Q. In performing that duty did you learn where the shipments went? A. Naturally.

Q. Where in the main did they go?

A. Well, I don't know where in the main they went, but they went to the proving ground, and Birmingham, Alabama, and various ports and sites of army installation.

Q. Could you give us an approximate estimate in your best judgment as to what percentage of them went outside of the State of Missouri?

A. Seventy or eighty per cent.

Q. And you are talking now about the ammunition that was produced at that plant? Is that it?

A. Yes, sir, also the waste and refuse which was part of the product of the plant—salvage.

Q. That was shipped out in the same way, is that right?

A. That is right.

Q. Now then, in addition to this information that you got from checking those bills of lading, I will ask you if in the markings—in the first place, how would they pack this ammunition?

A. I wouldn't know anything about that.

[fol. 861] Q. They were in some kind of containers, were they not? A. They were in containers and marked.

Q. Was there any different marking where it was a local shipment or outside shipment? A. On the container?

Q. Yes, sir. A. I couldn't say.

Q. Well, on the bill of lading?

A. The bill of lading was naturally destined to the town it was going to.

Q. And would the form and character of the document itself show the destination as well as the [routeing] on it, in many cases?

A. The document would show whether destined into the State of Missouri or out of the switching limits of Missouri.

Q. Is what you have stated in reference to handling of an outbound shipment of this ammunition, did that go along during the whole year or years the plant was operated? A. Yes, sir:

Q. You have stated the ordinary routine from the time you began until the plant stopped operating last August? Isn't that right? A. Yes, sir.

Q. You were there largely to assist operation as yard-master? A. Yes, sir.

[fol. 862] Mr. Bond: You may cross examine.

Cross Examination, by Mr. McRoberts:

Q. Mr. Eifert, these bills of lading that you refer to as Government bills of lading?

A. The predominant part of them were, yes, sir.

Q. On outbound shipments, they were all Government bills of lading, were they not? A. Oh—

Mr. Bond: Perhaps he can state what were and what were not, and name, regulation and all of the salvage.

Q. (Mr. McRoberts) On the finished product.

A. The finished product, the ammunition went out on Government bills of lading.

Q. To the best of your recollection?

A. Yes, sir; and the salvage went out on a commercial.

Q. What do you mean by Government bill of lading?

A. It was a form of bill of lading issued by the Government. It stated on the top it was a Government bill of lading.

Q. Who was the shipper in that?

A. I don't recall the exact wording, it wasn't the Cartridge.

Q. It was Government, whether it said "Government" or [Ordinance] Department, it was some agency of the United States Government? Is that correct.

[fol. 863] Mr. Bond: Object to that, Your Honor, if you are going into that detail.

A. I think it said St. Louis Ordnance Plant, I may be wrong.

Mr. McRoberts: You asked him about the contents of the bill of lading and the destination shown, and I didn't object.

Mr. Bond: I will withdraw the objection. Go ahead.

Q. Who would be the consignee in this bill of lading?

A. Various army depots.

Q. Other branches of the Government? A. Yes, sir.

Q. And who made up the Government bills of lading?

A. The best of my knowledge, the Government office.

Q. Did you have anything to do with making them up?

A. No, sir.

Q. Did anybody connected with the United States Cartridge Company have anything to do with making them up, so far as you know?

A. As far as finishing the complete Government bill of lading, I don't know whether they did or not.

Q. Do you know of any connection that anybody with the United States Cartridge Company would have with making up those bills of lading? A. No, sir, I do not.

Q. And where we would get those bills of lading? From whom?

[fol. 864] A. I would get them from a Government sealer.

Q. A Government sealer, you mean some representative of the United States of America? A. That is right.

Q. And what would you do with those bills of lading after you were through with them?

A. After I was through I gave them to the Terminal representative.

Q. That is a representative of the Terminal Railroad Association? A. Yes, sir.

Q. Did anybody for the Government tell you to check those bills of lading for [routeing]?

A. Not specifically, no, sir.

Q. Or for any misdescription of any kind?

A. Major Stevens, head of the transportation department, asked me if I noticed anything [wrong] in the bill of lading to call it to his attention.

Q. Major Stevens was representative of the Government of the United States of America? A. Yes, sir.

Q. He was not an employee of the United States Cartridge Company? A. No, sir.

Q. And in accordance with this request, when you noticed anything wrong you called it to the attention of [fol. 865] whom? A. Major Stevens.

Q. And after he was gone?

A. I think there was a Lieutenant King.

Q. Any error you noted you called it to the attention of a representative of the Government? A. That is right.

Q. Did you call any of those errors to the attention of anyone connected with the United States Cartridge Company?

A. If they were errors that were happening often, I did.

Q. What sort?

A. By car numbers and initials, I called to the attention of Mr. Zimmerman, because it was my understanding.

Q. Wait a minute; testify to just what you know.

A. Well, I know then that the Cartridge Company employees turned those car numbers over to the Government representative before they were put on the bill of lading and in what manner they turned them over, whether written or oral, I don't know.

Mr. Bond: Turned what over?

Mr. McRoberts: Car numbers and initials.

Q. In other words, after the car had been loaded the car number and initials would be turned over by some employee of the United States Cartridge Company to some representative of the United States Government?

A. Yes, sir.

Q. Now these representatives of the United States Government that you speak of, they were right there at the plant all the time? A. Yes, sir.

Q. They had their office alongside the Government office in the main office building?

A. You might say so; they didn't.

Q. They had one end of the building and the company had the other end? A. That is right.

Q. And the Government also had its employees and army men and representatives stationed throughout the plant at different places; didn't it? A. I believe so.

Mr. Bond: Simply because I think it is immaterial and unnecessarily lengthening the record, I want to object to that line of testimony, and for the reason the authorities are uniform if the goods were produced for commerce and moved in commerce, whoever shipped them is immaterial whether the producer or somebody else.

Mr. McRoberts: It goes to the heart of the defense, whether they were goods produced for commerce.

The Court: Admitted subject to the objection.

Q. Now Mr. Eifert, you took those bills of lading that the Government furnished you and turned them over to the representative of the Terminal Railroad Association?

A. That is right.

[fol. 867] Q. What did you do with the cars that were loaded out there and that were described in these various bills of lading?

A. Switched them out of the building they were loaded in and put them in the receiving and delivery yards.

Q. Where is the receiving and delivery yard?

A. Connected to the main part of the plant.

Q. It is on part of the plant grounds? A. Yes, sir.

Q. And by this receiving and delivery yard, that is just a railroad yard you are speaking of? A. Yes, sir.

Q. Where they had a number of switch tracks?

A. Yes, sir, fenced off from the main plant.

Q. And you or those two switch engines and your employees operating them, would deliver the cars to that yard? A. That is right.

Q. And you would then turn over the bill of lading to the Terminal Railroad Association? A. That is right.

Q. And then what happened to those cars?

A. They would pull them out and deliver to connecting line for destination.

Q. Terminal Railroad Association would pull them out?

A. Yes, sir.

Q. After the Terminal Railroad Association pulled them [fol. 868] out you don't know what happened to the cars of your own personal knowledge?—A. No, sir.

Q. And from the time those railroad cars were delivered to this yard—did you call it a receiving yard?

A. Receiving yard.

Q. To this receiving yard, did you do anything more with them?

A. After they were delivered to the receiving yard?

Q. Yes, sir. A. No, sir.

Q. Your duties with respect to those cars ended?

A. Yes, sir.

Q. Did you have anything to do with selecting the destination of those cars? A. No, sir.

Q. Or the route by which they were to be shipped?

A. No, sir.

Q. Who did that? A. I imagine—

Mr. McRoberts: Just a moment. Object to his guessing.

Q. It wasn't you? A. No, sir.

The Court: If you don't know, don't answer.

Mr. McRoberts: That is all.

[fol. 869] Redirect Examination, by Mr. Bond:

Q. You mentioned about Mr. Zimmerman as the man to whom you reported certain car numbers and initials of outbound shipments under certain circumstances?

A. Yes, sir.

Q. Who and what was he, and what position did he hold?

A. Traffic manager of the United States Cartridge Company.

Q. United States Cartridge Company? A. Yes, sir.

Mr. Bond: That is all.

RALPH WILSON HUGHES,  
of lawful age, produced, sworn and examined, testified on  
behalf of plaintiffs as follows:

Direct Examination, by Mr. Bond:

Q. Will you state your full name?

A. Ralph Wilson Hughes.

Q. Where do you live? A. St. Louis; 5547 Mimika.

Q. Are you married? A. Yes, sir.

Q. What is your age? A. Thirty-five.

Q. What is your occupation? A. At the present time?

Q. Yes, sir.

[fol. 870] A. Claim adjuster for the Transit Casualty Company.

Q. Were you an employee of the United States' Cartridge Company during their operation of the St. Louis Ordnance plant? A. For a period of time I was.

Q. When did you go to work for them?

A. August 25, 1941.

Q. How long did you work with them?

A. Up to July 28, 1945.

Q. Well, in what capacity did you first go to work for them?

A. I was employed as a material control clerk in the Production Controls Department.

Q. Where was that located at that time?

A. That was located in the Paul Brown Building.

Q. That was in 1941? A. Yes, sir.

Q. Before they completed the plant out there, wasn't it?

A. Yes, sir.

Q. And what were your duties there?

A. My duties there were very brief. At the time I was hired the company apparently, to my knowledge, they were building an organization and they needed men, and the job I was hired for there was not any work ready for me at the time. So when I was interviewed by my supervisor Mr. Streck, he mentioned my past experience and located and discovered in my conversation that I had some shipping knowledge, so he put me on the task of trying to prepare shipping papers.

Q. What shipping papers did you prepare?

A. I don't know that what I prepared was ultimately printed or not.

Mr. McRoberts: Object to that, it is preliminary work and immaterial whether that may or may not have been used.

The Court: I can't see how it is relevant.

Mr. Bond: I won't insist on it at this time.

Q. You did make some preliminary shipping papers, bills of lading, and so forth? A. Yes, sir.

Q. Now then, what other job did you go to next?

A. I was placed in the shipping department after this interview with my immediate supervisor, or superior. Placed in the shipping department and remained in that department for my entire career at the plant. I will take that back, I was later transferred into the warehouse.

Q. You speak of shipping department. Were there one or two and by whom were they operated and were they ever consolidated? Tell us the facts about that.

A. Well, I was in the shipping department of the United States Cartridge Company, and the shipping department was also a shipping department maintained by the Army Ordnance Department.

[fol. 872] Q. Was there any relation between those two, the duties?

Mr. McRoberts: Let him describe the facts.

Mr. Bond: That is what I am asking him.

Mr. McRoberts: Was there a relation between the two? That may call for a conclusion of this witness.

A. Well, the work in preparing the papers was similar.

Q. Was there ever a time when they were consolidated?

A. I understand they were, yes, sir.

Q. In what year?

A. I don't recall the exact date or year.

Q. And thereafter were the employees of the departments joint employees or not?

Mr. McRoberts: If you know, Mr. Hughes.

A. What is that?

Q. Do you know of any employee who was a joint employee?

A. Not a joint, he was a Civil Service employee and later came to the United States Cartridge Company as a United States Cartridge employee.

Q. When he was a Civil Service employee who was he working for?

A. He was working for the United States Government.

Q. What do you mean by "he afterwards came over to the United States Cartridge"?

A. I was referring to the time when the shipping department of the Army Ordnance was absorbed or was taken [fol. 873] over by the United States Cartridge Company.

Q. Well, after that what was the status of the employees? For whom were they working?

A. To my knowledge they were working for the United States Cartridge Company.

The Court: You say "to my knowledge," do you mean you know that?

A. Well, the boys in the office told me they were United States Cartridge employees.

Mr. McRoberts: Ask that the answer be stricken.

The Court: Sustained.

Mr. Bond: I think a man in the department ought to know who his associates were working for.

Q. Now then, what other job did you have out there?

A. I was the shipping supervisor, and I worked in the stores as a supervisor, in the Central Stores Division. It was also a division in the Production Control Department.

Q. Did you for a period serve as yardmaster?

A. Yes, sir.

Q. Tell us about that. A. During Mr. Eifert's vacation.

Q. By Mr. Eifert, you mean the man who has just testified here?

A. That is right. At the time for him to take his vacation I served in his position as yardmaster while he was [fol. 874] away on his vacation.

Q. And you heard him describe his duties here. Did you perform those duties during his absence? A. Yes, sir.

Q. Did they include the checking of these outbound bills of lading? A. Yes, sir.

Q. And for errors in [routeing] and other errors?

A. Yes, sir.

Q. And in the performance of that duty did you become familiar with the destination of these outbound shipments?

A. Yes, sir.

Q. Where did they go?

A. To my knowledge I know that some of the ears the bills of ladings showed they were consigned to Raritan Arsenal, Raritan yardmaster; the Army Service Forces' Depots, at Columbus, Ohio. And there was an army depot at Venetia, California—I don't recall the correct name. And there were others that I can't remember.

Q. At the time of that absorption that you were talking about, of the functions of the two shipping departments, were you given any duty with deference to the routine of that absorption? A. Yes, sir.

Q. What?

[fol. 875] A. I was assigned to the Ordnance Transportation Department to go down there and learn the details because when this—when my superior led me to believe that this department would be taken over, or this production work would be taken over by the United States Cartridge, all the employees that were down there might not go over to the Cartridge Company, they might decide to remain in Civil Service or just leave the whole organization altogether. So the company, wanting to be prepared, assigned me to the task of going down there and learning the whole detail. And I was privileged to examine the records and interview the men and ladies in this department to find out the duties, and to write them up and describe them so in the event the employees didn't come over to the United States Cartridge Company I would have to assist in building an organization to absorb all that work.

Q. In doing that investigation work, you say you had access to all of the records of the Army Ordnance. That is Army Ordnance shipping records and privilege to interview with the personnel? A. Yes, sir.

Q. In the performance of those duties did you come in contact with the billings they used to cover outbound shipment? A. Yes, sir, I was familiar with the papers.

Q. Did you learn from those papers the destination of [fol. 876] these shipments? A. Yes, sir.

Q. Tell us where they went.

A. Just as I named before, the shipment went to Army Service depots around the country, and naming the ones at Columbus, Ohio, Raritan, New Jersey, and Venetia, California. And some went to Savannah, Illinois, and Army Proving Grounds, I don't recall, there were many others.

Q. Did you have any connection with the question of packing and bracing of these shipments, or any duties in reference to checking up on that?

A. Yes, sir, as shipping supervisor for the United States Cartridge Company, responsibility was placed with me for the bracing of these cars.

Q. Containing ammunition?

A. That is right, and see that they were correctly braced. And all I could do was offer suggestions that the bracing be made stronger or weaker, whatever the case may be. And my suggestions were usually followed.

Q. When these cars arrived at destination, would any communication come back, pictures or other things that would come to your attention in reference to the condition of these cars being received at destination?

A. Yes, sir, the cars would be shipped out of the plant and we would hear from our superior that a car reached [fol. 877] a certain army depot and the car was damaged, and pictures would come back to the plant showing the damaged car, with the car number and depot that it had been received.

Q. Were those depots ever outside the State of Missouri?

A. Yes, sir, I would say 90 per cent of the times.

The Court: It is the usual time for recess.

Mr. Bond: I am through.

Mr. McRoberts: I have a few minutes cross examination.

The Court: Announce a recess until 2 o'clock.

Thereupon at 12:30 P. M., July 9, 1946, a recess was taken to 2 P. M. The proceedings were then resumed as follows:

The Court: Proceed.

Mr. Bond: Mr. Hughes, I had two or three further questions to ask you.

Q: Mr. Eifert in his testimony mentioned some so-called commercial bills of lading covering outbound shipments of scrap. Did you as part of your duty with the shipping department, have anything to do with those bills of lading? A. Yes, sir.

Q: Tell us what it was.

A. As shipping supervisor bills of lading were prepared by—

Mr. McRoberts: Your Honor please, object to any testimony with respect to shipments of scrap, that comes ordinarily of goods produced in commerce within the meaning of the act.

[fol. 878] Mr. Bond: I expect to show it was and connect it up.

The Court: It will be admitted subject to the objection.

Q. Go ahead.

A. As shipping supervisor it was the duty of employees under my supervision to type these commercial [bill of ladings] upon scrap brass, and they were in turn delivered, on carload shipments, they were delivered to the yardmaster, and on truckload shipments they were delivered to the truckdriver and transported out of the City of St. Louis.

Q. What do you mean when you say "commercial bills of lading"?

A. Commercial billing is the bill of lading that is put out in an industrial form, that people have them printed. They come under the jurisdiction of the Interstate Commerce Law.

Mr. McRoberts: I ask that be stricken.

Mr. Bond: The interstate commerce part, he can strike out. The rest I think is proper.

Q. Whose commercial bills of lading were those?

A. Those were bills of lading that appeared in the name of the United States Cartridge Company.

Q. And what material moved under those bills of lading?

A. The scrap brass that was created at the plant there.

Q. In the manufacturing operation? A. Yes, sir.

Q. In the manufacture of bullets, brass was the material that was used?

[fol. 879] A. Yes, sir, that is cartridges, in the manufacture of cartridges brass was used.

Q. And this was scrap that was developed in that process? Is that it? A. Yes, sir.

Q. And the company shipped it outbound under these bills of lading? A. Yes, sir.

Q. To where?

Mr. McRoberts: Let the bills of lading speak for themselves.

Q. What did you have to do?

A. I was responsible for the employees that made them up. My name appeared on the bill of lading as shipping representative for the United States Cartridge Company.

Q. Are you familiar with the contents of these bills of lading?

A. Yes, sir, the ones that my name appears on, they were reviewed the following day and shipment was made by me.

Q. Do you now know of your own knowledge that some of these bills of lading you just described covered shipments out of the State? A. Yes, sir.

Mr. McRoberts: Object—

Mr. Bond: I think that is proper, Your Honor; that is information gained in the ordinary course of business, that [fol. 880] document coming under his jurisdiction. It isn't offered for the purpose of showing the terminology or application of the contract, it is to show the fact of the destination of these shipments and source of his knowledge.

Mr. McRoberts: Object. The document is the best evidence, Your Honor. They are available, as I understand it and some of them are here in Court.

Mr. Bond: No, sir, not this. This man says he has knowledge where the shipments went, and this is where he got that knowledge.

The Court: Admitted subject to the objection.

Q. Now you may answer.

A. On truckload shipments there were numerous shipments made to Western Cartridge Company at East Alton, Illinois.

Q. Do you know how many truckloads a day that would average?

A. I would say on the average of about 18 truckloads a day.

Q. By the way, where would the trucks get these shipments?

A. They would be picked up at the receiving docks at the various manufacturing units. You see, that process depends on my duty to see that it was loaded.

Q. And did you, in fact?

A. Yes, sir, I had it in my hands; in checking my employees and covering the plant I saw the brass was picked up and loaded on trucks at numerous times.

Q. Would the trucks bear markings or labels?

[fol. 881] A. Yes, sir, some bore the name of Anderson Motor Service Company, and some trucks just the tractor bore the name of Anderson Motor Company and the trailer didn't.

Q. Would you see them move out of the plant?

A. Yes, sir.

Q. Have you had any railroad experience?

A. Yes, sir, I have. I have worked for the Missouri Pacific and the Terminal Railroads.

Q. For the record, what is a bill of lading?

A. A bill of lading is a document used to transport material within a state or interstate, and some bills of lading can be used in doing either one, if it is a bill of lading that is approved by the Interstate Commerce Commission, I mean.

Q. May I ask you this: A bill of lading as used in railroad parlance, is that a document which shows the name of the shipper and the name of the consignee?

A. Yes, sir.

Q. And describes the commodity and route of movement? A. Yes, sir.

Q. And contains negotiating instructions?

A. That is right.

Mr. Bond: I believe that is all.

Cross Examination by Mr. McRoberts

Q. Mr. Hughes, you testified to a taking over of certain employees of the Ordnance Department by the United [fo] 882] States Cartridge Company? A. Yes, sir.

Q. If I understand the facts they are these—and you correct me if I am wrong: Up until the time you speak of, employees of the Ordnance Department of the United States Army did the clerical work of making out these bills of lading, and did the clerical work of making up certain other papers in connection with shipments of cartridges from that plant?

Mr. Bond: I think that calls for a conclusion and argumentative. I think he ought to state the facts.

A. Yes, sir.

The Court: He may answer subject to objection.

Q. After a certain day those employees ceased to be employees of the Ordnance Department and became employees of the United States Cartridge Company?

A. Yes, sir.

Q. After they became employees of the United States Cartridge Company, then the United States Cartridge Company through these employees wrote up these bills of lading?

A. Yes, sir, these Government bills of lading.

Q. Government bills of lading, that is what I was talking about. A. Yes, sir.

Q. And they also wrote up, in connection with each shipment, another paper or set of papers, which described the contents of the car. Is that correct?

[fol. 883] Q. A. Yes, sir.

Q. I don't know whether you call that a daily sheet, they have different names, and that is what they refer to?

A. It is.

Q. But it was a sheet that told what particular box of ammunition, and the number of each lot it was it went into, and the particular car. Is that correct?

A. Yes, sir.

Q. And these same employees made up those papers?

A. Yes, sir.

Q. Now before these employees made up the Government bills of lading they would get from the commanding officer of the St. Louis Ordnance plant a Government shipping order, wouldn't they?

A. Yes, sir; in my experience working down there that was a blank order.

Q. From time to time the United States Army would issue a shipping order stating which lots of ammunition were to be shipped and where they were to be shipped to? Is that correct?

A. No, sir, I don't believe that is entirely correct. They were given blank orders for so much ammunition to be shipped to one depot.

Q. And those orders would state which lots of ammunition, whether armor-piercing, or tracer, or ball?

[fol. 884] A. Yes, sir.

Q. And also describe the lots themselves. Certain lots of ammunition had already been accepted, and they would say "ship these lots of ammunition to this Government arsenal or depot." Is that correct? A. Yes, sir.

Q. And those Government shipping orders would be sent either by the commanding officer or by somebody else for him? A. Yes, sir.

Q. By "commanding officer" I am referring to the officer of the United States Army who is in charge of the St. Louis Ordnance plant. There was such a person there at all times?

A. The way I understand, the orders came from the Transportation Officer in Washington.

Q. But they came through the commanding officer at the St. Louis Ordnance plant?

A. They were addressed to him, yes, sir.

Q. And with regard to the individual whose signature was on there, it was some officer or agency of the United States Army? A. Yes, sir.

Q. And then these employees of your department would make out the Government bill of lading from those orders?

A. At the time of that those employees were not in my department.

[fol. 885] Q. And whether it was in your department, those employees that came over and were working there, they made up the Government bills of lading from the Government shipping orders? A. Yes, sir.

Q. After they made up one of these Government bills of lading and filled in the blanks according to those instructions, what did they do with them?

A. You mean after the bill of lading was prepared?

Q. After it was prepared and they got it signed by some Government representative, didn't they? Or do you know?

A. Yes, sir, they were signed by a transportation officer.

Q. And a transportation officer of the United States Army, is that correct? A. That is right.

Q. And after they had been signed by the transportation officer of the United States army, what happened to them, if you know?

A. The bills of lading were transported to the railroad representative, to Mr. Eifert the one copy, and the rest were sent to the Terminal Railroad representative at the yard office.

Q. Those Government bills of lading were made in a number of copies, were they not? A. Yes, sir.

Q. And one copy would go to the Terminal Railroad?

A. Yes, sir.

[fol. 886] Q. And another copy would go to the consignee, wouldn't it? A. Yes, sir.

Q. That is, the Army depot or the Army arsenal, or wherever the Army was shipping those particular cartridges? A. That is right.

Q. And another copy would go to some other Government office? A. That is right.

Q. Did any of those copies go to the United States Cartridge Company? A. Not to my knowledge, no, sir.

Q. And whatever happened to them, they went to different Government agencies or offices? A. Yes, sir.

Q. Now those daily sheets that were made up, those were made up in duplicate copies or quadruplicate copies?

A. Yes, sir.

Q. And those sheets also were submitted to different Government agencies? A. Yes, sir.

Q. Were any of them sent to the United States Cartridge Company? A. No, sir.

Q. Or retained by them? A. No, sir.

[fol. 887] Q. You don't know anything of your own personal knowledge as to the reasons why these employees were transferred from the Ordnance Department to the United States Cartridge Company department?

A. The only thing I can say, their duties appeared similar.

Q. I am not asking you what their duties were, I am asking you about the reasons. A. I don't know.

Q. Approximately when was the transfer of these employees made?

A. I would say about the beginning of 1945, January, or the end of 1944.

Q. At the end of 1944 or the early part of 1945?

A. Yes, sir.

Mr. McRoberts: That is all. Thank you.

ARTHUR J. BENDA,  
of lawful age, produced, sworn and examined, testified on behalf of plaintiffs as follows:

Direct Examination, by Mr. Bond:

Q. State your full name, Mr. Benda. A. Arthur J. Benda.

Q. Where do you live?

[fol. 888] A. 3441a Crittenden Street, St. Louis.

Q. Are you married? A. Single.

Q. What age? A. Fifty years old.

Q. What is your occupation?

A. United States Field Auditor.

Q. You are a field auditor for the United States Army Ordnance? Is that it? A. Yes, sir.

Q. Where are you now stationed?

A. 4200 Goodfellow, or 4300 Goodfellow.

Q. That is what is now called the St. Louis Administration Center, isn't it? A. Yes, sir.

Q. And was formerly near the St. Louis Ordnance plant?

A. Yes, sir.

Q. And that is the plant and those are the premises we are talking about in this case? A. Yes, sir.

Q. As field auditor for the United States Army Ordnance, you are in charge of certain records out there, are you not?

A. Yes, sir, in a general way. I am in charge of the administrative audit.

Q. And you have under your control the records of the [fol. 889] outbound shipment of ammunition from your plant during its operation as a war plant? A. Yes, sir.

Q. And I believe I had subpoena duces tecum served upon you to produce in this Court the records of the outbound shipments of ammunition from your plant, did I not? A. You did.

Q. And following the service of that [subpoena] upon you, I called on you at the plant and you advised me that you had obtained permission to produce those records? Isn't that so? A. That is correct.

Q. Did you tell me anything about what an undertaking it would be to bring all the records covering all the ammunition, or can you tell the Court what it would be?

A. Well, it would be—it wouldn't be a physical impossibility, however I would judge that to bring in all of the records it would take about three or four truck loads.

Q. And so did we have an understanding then that you would take out a bunch of bills of lading with attached documents from the files for each year at random?

A. Yes, sir.

Q. And bring them down here as illustrative?

A. Yes, sir.

Q. Did you do that? A. I did.

[fol. 890] Q. Have you them here? A. I do.

Q. I believe you have them for the years—

A. 1941, 1942, 1943 and 1944.

Q. I believe 1941 was mostly in the period of construction, was it not? A. That is correct.

Q. And the real movement of ammunition began in 1942?

A. Yes, sir.

Q. Suppose; then, we start with 1942. A. All right.

Q. In the first place, suppose you describe to us what those records are that you have brought here in that folder, first telling us how you obtained that folder.

Mr. McRoberts: The record will [snow] by identification number what it is he is talking about.

Mr. Bond: Yes, sir. Let's identify these as a bundle of bills of lading, a sack of bills of lading with attached papers in a folder marked "WQ", and have the reporter identify them as "Plaintiffs' Exhibit I". Suppose you mark the folder for the time being. (The folder is marked as requested)

STANDARD FORM NO. 1000a  
FEDERAL APPROVED BY  
COMPTROLLER GENERAL U. S.  
AUGUST 26, 1942

## UNITED STATES OF AMERICA

P1 EX I  
No. WQ-  
7/9/46 AP

BILL TO WAR DEPARTMENT

(Department of War or Department of Defense)

SEE BILL FOR LIST OF SHIPMENTS

(Appropriation chargeable)

Mr. Leslie Johnson, Room 200, Post Office, Kansas City, Missouri

(Shipping office)

P.H. Sawyer, Post 10, Post Office, Kansas City, Missouri, September 10, 1942

(Date issued)

GOVERNMENT BILL  
OF LADING

## MEMORANDUM COPY

Received from P.H. Sawyer, Post 10, Post Office, Kansas City, Missouri

(Originator)

by the New York, Chicago &amp; St. Louis Railroad Co. (submitting by the public property hereinafter described,

(Name of transportation company)

in apparent good order and condition (contents and value unknown), to be forwarded subject to conditions stated on the reverse hereof,

from St. Louis, Missouri

(Shipping point)

to

St. Louis, Missouri

(Destination)

by the said company and connecting lines, there to be delivered in like good order and condition to the addressee

(Consignee)

via ROUTE - 17

(Route journey only when some substantial interest of the Government is subserved thereby)

MARKS	NUMBERS ON PACKAGES	NUMBER AND KIND OF PACKAGES	DESCRIPTION OF ARTICLES (Observe strictly carrier's freight classification. Avoid trade or technical names)	WEIGHTS *
COMMANDING OFFICER, ARMED GUARDIAN BATTALION, GARIBOLDI, NEW YORK.		2006 Boxes	Small Arms Ammunition (small arms cartridges, limited)	225.00
U.S. PROPERTY MILITARY			"This is to certify that actual weight of damage used in this car is 200 pounds, not included in the above weight."	"Actual"
Route Order No. 20 57707 War Dept., C of I.C. Sept. 10, 1942			See Order 20 57707 (U) 10000	

COMMANDING OFFICER, ARMED GUARDIAN BATTALION, GARIBOLDI, NEW YORK.	2006 Boxes	Small Arms Ammunition (small arms cartridges, limited)	225.00
U.S. PROPERTY MILITARY		"This is to certify that actual weight of damage used in this car is 200 pounds, not included in the above weight."	"Actual"
Route Order No. 20 57707 War Dept., C of I.C. Sept. 10, 1942		See Order 20 57707 (U) 10000	

Pick-up service at origin was not by the Government.

Ralph Charles Ord. Dept. Ass't. R.T.O.

{ Size car ordered ft. Size car furnished ft. Date furnished Initials Date Car No. }  
{ 500 ft. 500 ft. 10-10-42 J.W. 20 57707 }TARIFF AUTHORITY  
(To be filled in by general office rendering account)

THE NATIONAL RAILROAD FREIGHT ASSOCIATION OF ST. LOUIS

Received subject to terms and  
conditions of the Railroad Company's General Rules  
(Dated) F. E. HAMPTON Agent

S.O. AUTHORITY FOR SHIPMENT

CERTIFICATE OF ISSUING OFFICER  
(To be filled out when this bill of lading is issued for use by contractor in making shipment)

Contract No. or Purchase Order No. dated , 19

(F. O. B. point named in contract)

(Issuing officer)

(CARRIER'S RIGHTS TO SHIPPING CHARGES NOT AFFECTED BY FACTS SET OUT IN THIS CERTIFICATE)

## MEMORANDUM COPY

Delivery service at destination was not by the Government.

\* Show also cubic measurement for shipments via ocean carrier in cases where required.

† Furnish this information in case of carload shipments only.

[fol. 892] Q. Referring to the folder marked Plaintiff's Exhibit I.

A: In the folders are copies of Government bills of lading showing movements of ammunition and other materials from Missouri to other points.

[fol. 893] Q. By "other points" you mean points outside of the State of Missouri?

A. As indicated on these copies of bills of lading, yes, sir.

Q. But they all refer to outbound shipments out of the State, do they not?

A. I wouldn't say that every copy of bill of lading in there would cover that answer. As I mentioned to you, Judge, at the time these were picked indiscriminately, some of these folders will contain inbound shipments and outbound shipments together. These bills of lading are filed by numbers numerically, and you wished me to pick them indiscriminately, and I did.

Q. And, insofar as you got outbound shipments, they are all points out of Missouri?

A. I don't know. I didn't examine every bill of lading in the folder.

Q. Take the top one here, tell us what that is?

A. This is a copy of a Government bill of lading showing shipment of 300 boxes of smokeless powder shipping—it looks like 300 smokeless powder boxes shipping loose empty, used.

Q. It gives the weight?

A. Yes, sir, and shows the destination.

Q. In other words this document, who does it show as the shipper?

[fol. 894] Mr. McRoberts: These documents speak for themselves. I have no objection.

Mr. Bond: I am trying to get one in and ask him for a stipulation in reference to what the others would show and see if I can't avoid having all this material put in the record.

The Witness: This copy of bill of lading indicates that the issuing office was St. Louis Ordnance plant, St. Louis, Missouri.

[fol. 903] Q. Outside the State of Missouri you have records? A. Yes, sir,

Mr. Bond: Now then, will you let the record show that Mr. Benda is permitted to withdraw these three exhibits and that he has agreed to have photostats made of them and to mail sufficient copies to me for my use and the reporter's use and Mr. McRoberts' use?

Mr. McRoberts: You offer your exhibits in evidence?

Mr. Bond: Yes, sir; I have offered them in evidence.

[fol. 904] Mr. McRoberts: Is that all you have with this witness?

Mr. Bond: Yes, sir.

Cross Examination by Mr. McRoberts:

Q. Have you your 1944 file? A. Yes, sir.

Q. Mr. Benda, this Exhibit K is not quite complete, in that the top is torn off and in the place that is torn off there should appear the words "U. S. Government bill of lading memorandum." Is that correct?

A. Yes, sir, that is correct.

Mr. Bond: The carbon copy isn't torn, is it? This bottom paper, the carbon copy of the top paper?

A. It bears the same number and it is shown as a memorandum.

Mr. Bond: Perhaps, maybe in having your photostat made you could photostat the bottom one instead of the top one that is not mutilated.

May we also let the record show that any outbound shipment outside of Missouri that moved ammunition in 1945, moved under bills of lading similar to Plaintiff's Exhibit K?

Mr. McRoberts: Whatever the testimony of the witness is.

Mr. Bond: There was no change in form in 1945, was there?

A. It would still be Government bills of lading, Judge, I wouldn't know whether they changed the forms in the

Q. (Mr. Bond) Go ahead. And who does it indicate was the consignee.

A. It indicates the consignee was Carme, Inspector of Ordnance Western Cartridge Company, East Alton, Illinois.

Q. And it describes the commodity shipped?

A. Yes, sir, as 300 empty used smokeless powder boxes.

Q. That wouldn't be a shipment of ammunition, would it? A. No, sir.

Q. The next one, then. State into the record what that is, who it shows as consignor, who was consignee, and destination and material shipped.

A. This is a copy of a Government bill of lading No. WQ 4,612,424. It shows the issuing office to be St. Louis [Ordnance] plant, St. Louis, Missouri. It shows the consignee as the Commanding Officer, Seneca Ordnance Depot, Kendall, New York, United States property, Military. It purports to ship 1056 boxes of small-arms ammunition. [fol. 895] That means small arms cartridges, loaded.

Mr. Bond: Now I will put this bill of lading in the record, and I wonder if we could stipulate that during the year 1942 there was a substantial movement of ammunition produced at this plant to out-state points on bills of lading similar in form as the one you now hold in your hand, Mr. McRoberts?

Mr. McRoberts: I think so. Just a moment. Mr. Banda, is this exhibit which I have in my hand a typical example of the type of bills of lading that was used in the shipment of a substantial part of the ammunition in the year 1942?

A. I would say so, yes, sir.

Mr. McRoberts: There is your testimony.

Mr. Bond: All right, I will have it marked and offer it in evidence. You said a substantial movement, didn't you?

Mr. McRoberts: I think it was in the question.

Q. (Mr. Bond) The fact is, you know that the big out-bound movement was ammunition, don't you? A. Yes, sir.

Q. And that was true of every year except 1941?

A. Except 1941, and perhaps half of 1945, naturally.

middle of the year, or later, or not. I wouldn't know with [fol. 905] out checking every bill of lading in the entire year, if there was a change from this year to this year. I don't know about that, but all back bills of lading would follow some form or other indicated.

Mr. Bond: And it covered in 1945 a substantial outbound movement of ammunition to points out of Missouri?

A. I think so.

Mr. Bond: I want to formally offer in evidence Plaintiffs' Exhibits I, J and K. Those are the ones you are to photostat the bills of lading, just the top paper, and mail to me.

A. Except, Judge, this one where the U. S. Government bill of lading is cut off, the photostat will be made of this copy, but it will not bear this inked—

Mr. Bond: I guess you had better photostat the top one because it is torn, because Mr. McRoberts has explained the mutilation in the record.

[fol. 906] Mr. Bond: That is all.

Q. (Mr. McRoberts) Referring to Plaintiffs' Exhibit I, I see under the caption mark, in addition to the name Commanding Officer, Seneca Ordnance Depot, Kendall, New York, the words "U. S. Property, Military." Does that refer to a marking on the box or carton, or to what does that refer? A. I don't know.

Q. Before that I see the words, "Route Order No. TS 37707." To what does that refer? A. I don't know.

Q. And below, the words, "War Department C of TS, September 18, 1942." Do you know to what that refers?

A. No, sir.

Q. And down below under the caption, "Authority for Shipment," I see the letters and figures SO 6469-T-2, September 18, 1942. Do you know to what that refers?

A. I could guess, but I don't know.

Mr. Bond: I don't want him to guess.

Q. All of those records which you have produced here, including the three papers which have been offered in evidence as Plaintiffs' Exhibits I, J and K, are Government records? Is that correct? A. That is correct.

Mr. Bond: That will be marked plaintiff's exhibit.

The Witness: If you want a copy we will have a copy made for you for introduction into the record, but we can't give up that. It being Government records I just can't [fol. 896] do it, but a copy can be made.

Mr. Bond: Would it be satisfactory if we mark this "Plaintiff's Exhibit I," and you take it away with you and have exact copies made? Mail one to Mr. Phelan, one to Mr. McRoberts, and one to me.

The Witness: Yes, sir, you indicate to me and we will have photostatic copies made of that.

Mr. Bond: Yes, sir, that will be satisfactory, Your Honor.

The Court: That is right.

Mr. Bond: Just send the three copies to me and I will distribute them.

Q. (Mr. Bond) Now take the file of 1943. I show you here the top bill of lading on that file and ask you to describe that as you did the other. Give us the consignor and consignee shipment, describe the shipment.

A. This is a copy of the Government bill of lading numbered WQ 8,891,100. It shows the issuing office the St. Louis Ordnance plant, St. Louis, Missouri. It purports to ship to the commanding officer, Bluegrass Ordnance Depot, Ft. Estill, Kentucky, U. S. property, military, 848 boxes small arms ammunition. Small arms cartridges.

Mr. Bond: Now then, will you mark that "Plaintiffs' Exhibit J?" (Paper is marked as requested.)

Q. I will ask you, Mr. Benda, if this is representative [fol. 897] of a substantial movement of ammunition from the St. Louis Ordnance plant to points outside the State of Missouri during the year 1943? In other words, did a substantial quantity of ammunition move in that year to points outside the State of Missouri under bills of lading in this form?

Q. And property of the United States Government?

A. Yes, sir.

[fol. 907] Q. And under the control and supervision of the United States Government? A. Yes, sir.

Q. They are in the possession of the Government?

Mr. Bond: No, sir, they are in his possession.

Q. You are a representative of the Government, and as such they are in possession of the Government?

A. Government records and Government property.

Q. And they are not in possession or control of the United States Cartridge Company?

A. Not under their control.

Mr. Bond: The United States Cartridge Company has access to them, have they not?

A. Yes, sir, they have access to them.

Q. (Mr. McRoberts) How would they have access to those records?

A. They could go to the place where they are filed, because these bills of lading are filed numerically. They will cover some inbound shipments as well as outbound shipments, and in order to correct or check the record it may be that they would have to refer to the number of the box on the bill of lading in order to check with the records. That would be the way they would refer to them.

Q. Do they walk in there any time, or ask permission?

A. No, sir, they ask permission definitely.

[fol. 908] Q. And you grant them permission normally?

A. Yes, sir.

Q. Or refuse them if you see fit to do so? A. Yes, sir.

Mr. McRoberts: That is all.

Mr. Bond: That is all, Mr. Benda. Much obliged to you.

Mr. Bond: I have a very elaborate document here, Your Honor, entitled "Bullets by the Billion", issued over the signature of the St. Louis Ordnance Plant and the United States Cartridge Company and McQuay-Norris Manufacturing Company, the genuineness of which has been admitted, and from which I would like to read in evidence—I would like to have it marked for identification as an exhibit and read in evidence certain portions of it.

Mr. McRoberts: May I ask a question that may simplify it?

Mr. Bond: Yes, sir.

Mr. McRoberts: From your familiarity with the records, Mr. Benda, wasn't all or substantially all of the ammunition which was shipped out of the plant during the year 1943 shipped in bills of lading, Government bills of lading in the form of this Plaintiffs' Exhibit J?

Mr. McRoberts: I object to singling out piecemeal. I think the entire document ought to be offered, if at all.

Mr. Bond: It is a publication gotten out by the Publicity Department of St. Louis. I am offering the part bearing on the question of knowledge on the part of this defendant that the bullets were manufactured.

The Court: All right, read it, and you can offer any other that you want.

Mr. Bond: The portion I want to read occurs on page 1 and is as follows:

"The first completed cartridges were accepted by [fol. 909] the Ordnance Department on December 8, 1941, the day after Pearl Harbor, and since that date over two billion rounds of ammunition have been manufactured and accepted by the Ordnance Department and shipped to the fighting forces all over the world."

Mr. Bond: Then I wish to read the following from one of the introductory pages that is marked with red:

"The cartridges manufactured here are packed in several ways depending upon the needs of the army forces and use for which the cartridges are intended. Originally, all of our output of cartridges was packed in cartons and sent to ordnance depots where they were repacked, but now an increasing percentage of our cartridges are packed here for field service."

And following, also marked in red, on one of the subsequent pages:

"We can visualize our ammunition in the hands of white-clad soldiers in the frozen North. We know it is used by half naked fighting men in [streaming] jungles and amid the torrential rains of the Tropics. We can understand why our ammunition must be made to function perfectly under all climatic conditions because whether in mud and slush, in desert [heat] or arctic cold the fighting man behind the gun depends on us for ammunition that will not let him down. Our cartridges go places. It would be inter-

Note

Blank Pages at this Point

esting and exciting to follow our ammunition to its ultimate destination and actually see it in action [fol. 910] against the enemy. We have heard from friends and relatives in military service how they have used the ammunition produced at the St. Louis Ordnance Plant, but few of us have known exactly how the cartridges were handled in order to reach our fighting men. After the finished ammunition is accepted by the Ordnance Department here at the plant, it is then shipped to another section of the Ordnance Department which in connection with the service of supply is responsible for the distribution of all materials of war, such as ammunition, guns, shells, planes and tanks to the military services in all parts of the world. Some of the ammunition goes to vast storage areas from which it can be quickly transported to the theatres of war. (skipping a paragraph)

Through the service of supply our calibre 30 and calibre 50 cartridges go everywhere in the world that our army forces use rifles and machine-guns—on the ground, in the air and on the sea. Our ammunition can be found on tanks, on plane, on jeeps, halftracks, armored cars, on ships; torpedo boats, and in the hands of antiaircraft fighters. Many of our employees who have sons, husbands and brothers in the Navy and Coast Guard will be happy to know that much of our ammunition finds its way into Naval Ordnance depots where it will be available to the various types of naval vessels and naval aircraft."

Mr. Bond: Now, mark this "Plaintiffs' Exhibit D", entitled "Bullets by the Billions," St. Louis Ordnance [fol. 911] Plant, containing the names of top officials of the Ordnance Department, of the United States Ordnance Plant, United States Cartridge Company, and McQuay-Norris Manufacturing Company, an elaborate publication with photographs and articles. (The publication is marked as requested.)

[fol. 932] As further showing knowledge on defendant's part, and for other purposes, I offer in evidence certain issues of a magazine or publication entitled "United States Cartridge News," published at the St. Louis Ordnance

Plant, and the genuineness of all of which has been admitted, being the publications for October 1, 1942, November 1, 1942, November 15, 1942, December 1, 1942, February 15, 1943, July 15, 1942, and September 1, 1942. And of these publications I am offering in evidence the portions which I read. Reading from the issue of November 1, 1942:

"It is now only too clear that every single small operation in the manufacture of a cartridge is vastly important, for now we know that a defective cartridge can stop one of our guns. We realize also because of this the man behind the gun may die. One defective cartridge may stop an anti-aircraft gun which could have brought down an enemy bomber. One defective cartridge may cause a tank to be captured. One defective cartridge may be the result of one operation carelessly performed. You get kind of a shaky feeling when you stop to think that every soldier, every sailor, every man in the air corps, every [fol. 933] machine, is depending upon you and me. For it takes bullets to stop the enemy, and the armed forces are looking to us for an ever increasing flow of ammunition. Most of us felt a surge of pride within us when we realize we, too, play an important part, not in this show but in that big show—the war. We are, the people who make it possible to operate the tanks, the jeeps, the half track squad cars, the anti-aircraft defenses, the machine guns and rifles in actual battle. We, the workers of the St. Louis Ordnance Plant, are the guys behind the guys behind the guns. It is a good feeling—a proud feeling."

Mr. Bond: There are a number of other extracts to the same effect which are offered to show knowledge of the purpose for which this ammunition was manufactured, which I will not—I will let the record [---] were read in evidence, but I will only read certain of them. This issue of July 15, 1942, this is one I want to read as it bears on the proposition of the safety department being interwoven with the war part.

"Most of us realize that working in a war industry, such as the St. Louis Ordnance, is more important

than working in a nonessential industry. Everyone of us should feel that this work matters not only to himself and his foreman, but his work is a vital part of the total war effort. The statement applies with [fol. 934] equal truth to the executive and porter, to the machine operator and file-clerk, the stenographer and inspector. You do not necessarily have to handle machines or cartridges in order to help make ammunition; but whoever you are, wherever you are in this great plant, you have been chosen to play a vital role in the production program."

Mr. Bond: In the issue of September 1, 1942, the paragraph marked with a red check, on page 2, let the record show was read.

Mr. Bond: On the issue of October 1, 1942, let the record show that on page 2, two extracts with a red check, red pencil check after them, were read in evidence.

Mr. Bond: The issue of November 15, 1942, on the front page, let the record show that three paragraphs indicated by red pencil checks, were read.

Mr. Bond: The issue of November 1, 1942, let the record show that part marked in red pencil on page 1, was read.

Mr. Bond: The issue of December 1, 1942, paragraph on first page, marked in red pencil, was read.

Mr. Bond: February 15, 1943, I offer in evidence so much of the first page as contains the biography of a man handling ammunition out of a box, entitled "St. Louis Ordnance Plant," and with the title at the top, "Unpacking our cartridges on aircraft carrier during invasion of Africa," and the writing on the bottom.

[fol. 935] Mr. Bond: Next, "photograph shows a sailor aboard an aircraft carrier unpacking belts of calibre 50 machine gun cartridges made in our plant. The cartridges are to be used by our fighters protecting troop ships en route to invasion of North Africa last November. The lettering on St. Louis Ordnance Plant, which is clearly seen on the packing chest behind the sailor gives proof that our cartridges played an important part in the success of the North African operations."

[fol. 899] A. Yes, sir.

Mr. McRoberts: Now as to the destination of these individual shipments, you do not attempt to testify as to where any particular shipment went?

A. That is correct.

Mr. McRoberts: But a substantial part of it, according to your information was shipped outside of the State to other Government agencies? A. That is correct.

Mr. McRoberts: To what particular party, you don't know? A. I don't know.

Mr. McRoberts: All shipments that were made were made on this form?

[fol. 900] A. Yes, sir.

Mr. Bond: I don't like that "other Government agencies", they were shipped to points outside of the State of Missouri.

Mr. McRoberts: That is what the witness testified to.

Mr. Bond: No, sir, he doesn't know that all went to Government agencies. Some went to Government depots and some to other addresses.

Mr. McRoberts: The record will speak for itself, as to what he testified.

The Court: Let the witness say.

Mr. Bond: Of course, Your Honor, we are trying to cover, we are trying to make this illustrative of a substantial movement; that is all. And the substantial movement that I want it illustrative of is of ammunition to points outside the State of Missouri. And I am willing to concede that it was shipped in this way, in bills of lading in this form. Is that agreed to?

Mr. McRoberts: That bill of lading speaks for itself. The witness has testified that shipments of ammunition were made on the same bill of lading. And I am willing to stipulate that so far as we know they were shipped to the same or similar consignees.

Mr. Bond: All right. Let me have the one for 1944.

Q. (Mr. Bond) Taking the top one, tell us what that is. It is taken from the files of 1944,

[fol. 901] A. This is a copy of a Government bill of lading numbered WQ 6,832,350. It shows the name of the shipper as St. Louis Ordnance Plant, 4300 Goodfellow Boulevard, St. Louis, Missouri. It is marked, "Marked for U. S. Navy stock. Consignee, Supply Officer Naval Ammunition Depot, Crane, Martin County, Indiana, yard track". The destination is the same, Crane, Martin County, Indiana. "Reported to contain 1092 boxes of small-arms ammunition." Small army cartridges, loaded.

Q. And all outbound ammunition that moved out of the plant during the year 1944, moved under a bill of lading in similar form? A. Correct.

Q. And there was a substantial outbound movement of ammunition during that year? A. Yes, sir.

Mr. Bond: I ask that be marked "Plaintiffs' Exhibit K".

(The bill of lading is marked as requested.)

Mark these as my exhibits. And those publications, "United States Cartridge News," will be Plaintiffs' Exhibits E-1, E-2, E-3, E-4, E-5, E-6, E-7.

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[fol. 992] GORDON B. DARBY,  
of lawful age, produced, sworn and examined, testified on  
behalf of plaintiffs as follows:

Direct Examination by Mr. Bond:

Q. State your full name, please. A. Gordon B. Darby.

Q. Where do you live, Mr. Darby?

A. 3928 Chippewa, St. Louis.

Q. What is your occupation?

A. Service station operator.

Q. And are you married or single? A. Married.

Q. Did you formerly work at the St. Louis Ordnance Plant? A. I did, yes, sir.

Q. In what capacity? A. As a safety engineer.

Q. I believe during all the time you were safety engineer you never got any change in title. Isn't that right?

A. That is right.

Q. How did you get your job? Where did you get it, rather?

A. My original application was sometime before I went to work out at the plant as a safety engineer. I was to go to work for the plant as coordinator. However, a few days previous to when I was to report for work I understand there were some changes made in the department of coordinators; therefore it was quite some months later before [fol. 993] I went to work as a safety engineer.

Q. According to Plaintiffs' Exhibit A, Mr. Darby, you went to work as a safety engineer on March 21, 1943. Isn't that correct? A. I believe that is about the time, yes, sir.

Q. And your work terminated on August 31, 1945. That is when the plant closed? A. Yes, sir.

Q. And during all that time you were safety engineer?

A. That is right.

Q. Now in what unit or to what unit were you assigned?

A. Well, the first two weeks at the plant I believe I just made tours and was assigned to another man to be-

come more or less familiar with the whole setup of the plant.

Q. Had you had any previous experience in safety work?

A. No, sir.

Q. And in your application for the job were any special requirements demanded of you? A. No, sir, there were not.

Q. You were not required to have any special training?

A. No, sir.

Q. And to what unit of the plant were you sent?

A. I think it was about two weeks after I went to work there I was assigned to Building 104, which was 50 caliber ammunition manufacturing building.

Q. Who were the other two engineers with you?

[fol. 994] A. I don't remember the names of those men that worked on the other shifts.

Q. What shift did you work on?

A. It seems to me I went to work on that shift at that particular time. I am not sure whether it was midnight or the four to twelve shift.

Q. What were you required to do?

A. To patrol the building in general and inspect equipment throughout the building, also watch employees for infractions as to whether they were wearing the proper equipment, safety glasses, proper shoes in restricted buildings, the primer building, loading building of that manufacturing unit.

Q. And were you also required in the case of accidents to follow up on accidents?

A. Yes, sir, periodically we would go to the first aid room to see whether or not there had been any accidents, and pick up these slips that were made out by the nurses and, wherever possible, interview the injured employees.

Q. Now, going back to that part of your duties, that consisted of daily patrolling and inspecting report on infractions of safety regulations, that was your main duty?

A. Yes, sir.

Q. When you found any violations of safety rules or practices, what did you do?

A. If it was an employee, we went to the foreman, [fol. 995] tacted the foreman to have the infraction corrected. If it was equipment we would also go to the foreman of that department, or the general foreman, whoever was handy, and make a request that it be rectified. Now

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FEDERAL CARRIER'S RECEIPT FOR PROPERTY SHIPPED  
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1943

NO. WV-6832350

P1 EX K

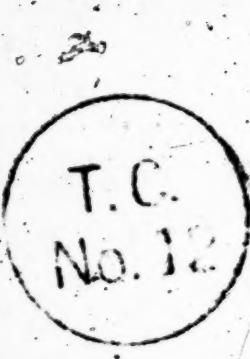
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CAR INITIALS AND NO.

WEP 913

NAME OF INITIAL TRANSPORTATION (switched by TRAFFIC CONTROL NOS.)  
COMPANY New York Chicago & St. Louis RR Co.

STOP THIS CAR AT FOR



RECEIVED BY THE TRANSPORTATION COMPANY NAMED ABOVE SUBJECT TO CONDITIONS NAMED ON THE REVERSE HEREOF, THE PUBLIC PROPERTY HEREINAFTER DESCRIBED, IN APPARENT GOOD ORDER AND CONDITION (CONTENTS AND VALUE UNKNOWN), TO BE FORWARDED TO DESTINATION BY THE SAID COMPANY AND CONNECTING LINES, THERE TO BE DELIVERED IN LIKE GOOD ORDER AND CONDITION TO SAID CONSIGNEE.

CONSIGNEE

SUPPLY OFFICER  
NAVAL AMMUNITION DEPOT  
GRANGE (MARTIN COUNTY) INDIANA

YARD 2

DESTINATION

GRANGE (MARTIN COUNTY) INDIANA

VIA ROUTE JOURNEY ONLY WHEN SOME SUBSTANTIAL INTEREST OF THE GOVERNMENT IS SUSPENDED THEREBY.

BY CARGO TRUCK

PICK-UP SERVICE AT ORIGIN WAS NOT BY THE GOVERNMENT OR ITS AGENT  
(INSERT "WAS" or "WAS NOT")  
INITIALS OF SHIPPER'S AUTHORIZED AGENT OR EMPLOYEE

PACKAGES NO.	DESCRIPTION OF ARTICLES (USE CARRIER'S CLASSIFICATION OR TARIFF DESCRIPTION IF POSSIBLE, OTHERWISE A CLEAR NONTECHNICAL DESCRIPTION)	NUMBERS ON PACKAGES	WEIGHTS*
	MILITARY		

GRANGE (MARTIN COUNTY) INDIANA

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PACKAGES NO.	DESCRIPTION OF ARTICLES (USE CARRIER'S CLASSIFICATION OR TARIFF DESCRIPTION IF POSSIBLE, OTHERWISE A CLEAR NONTECHNICAL DESCRIPTION)	NUMBERS ON PACKAGES	WEIGHTS*
2092	Small Arms Ammunition (small arms cartridges) Loaded Damage used Free damage		
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			"Actual"
	THEA Car Scale: 796981-02		
	82074-8-93298-4 11 Oct 44		
	Actual No Charge		

CERTIFICATE OF ISSUING OFFICER

CONTRACT NO. OR  
PURCHASE ORDER NO. \_\_\_\_\_ DATED \_\_\_\_\_  
OR OTHER AUTHORITY FOR SHIPMENT

F. O. B. POINT  
NAMED IN CONTRACTSIGNATURE OF  
ISSUING OFFICER

Lloyd H. Ruff, Capt. Ord. Dept. T. O.

By: M. TORRIZZO, P. T.

NAME OF TRANSPORTATION COMPANY

(Switched by TRAFFIC CONTROL NOS.)  
NEW YORK, CHICAGO & ST. LOUIS RR CO. of Ill.

DATE OF RECEIPT OF SHIPMENT

Railroad, City, State, Date

F. E. SAWYER, Agent

SIGNATURE OF AGENT

10/30/44 T.O.

MEMORANDUM COPY

that sometimes could be done immediately, other times it required a work order which would have to be followed through by the man that succeeded me on the next shift and a report—however, we kept a written record of these different things that transpired and turned that into our supervisor at the end of the shift.

Q. In case you observed an employee in violation of the safety practices, or found some defective apparatus, you say you reported it to the employee's foreman or the foreman? A. Yes, sir.

Q. Or supervisor, production supervisor in that unit? A. Yes, sir.

Q. Did you do anything about correction?

A. No, sir, I had no authority to force a correction, but merely to request a correction.

Q. And having done that and then having reported it to this supervisor or foreman in your daily log, is that the full statement of your relation to the matter?

A. Yes, sir, that would be. It was taken in and put on the supervisor's desk and was viewed by him and later consolidated for the full shift and distributed among the employees in the safety department, and I believe some of [fol. 996] the manufacturing officials, among which are building superintendents and so on. Now in case of accidents, that was handled separately and that was handled definitely. Minor accidents, we would go to the First Aid and probably talk to the employee and get his version. Hospital cases and most cases you would report on what the injury was, would come back to me probably through my supervisor, which would be incorporated in the report I made out according to the survey that I had made.

Q. And going back to the ordinary matter of violations of safety regulations in employees or equipment, and to those reports that you made to your supervisor, would he make reports then on to the director in reference to that?

A. That was the consolidated report.

Q. And would they go to all safety engineers?

A. Yes, sir, they were not given to you directly, they were put in an open shelf or box.

Q. And by that way you could obtain one? Is that such a one? I am referring to Plaintiffs' Exhibit H.

A. Yes, sir.

Q. That reflects the manner in which you would ordinarily report several violations? A. Yes, sir.

Q. And the manner in which you would report what attention the foreman gave to that? A. Absolutely.

Q. And the manner in which your supervisor would pass that up to the director? A. Yes, sir.

Q. Now these machines that you patrolled and the buildings that you patrolled and employees that you observed—were the buildings, machines and employees concerned in the manufacture of these bullets? A. Yes, sir.

Q. Do you know all these men who are plaintiffs in this case?

A. I know part of them. There are some I never saw until today or yesterday.

Q. But you know a great many of them? A. Yes, sir.

Q. And you remember them as being at the plant and as being safety engineers?

A. Yes, sir, they worked in the same department I did.

Q. You got one of those books, I believe, "Your Job With the St. Louis Ordnance Plant?" A. Yes, sir.

Q. And you received this magazine that I have read from, in the mail? A. Yes, sir.

[fol. 998] Mr. Bond: I believe that is all.

#### Cross Examination by Mr. McRoberts.

Q. Were you given lectures on that book?

A. No, sir, I never attended a lecture. I have attended the supervisors' meeting, yes, sir.

Q. Who gave you your copy of this Defendant's Exhibit F?

A. I believe the supervisor, when I was employed; he gave it to me.

Q. And what did he tell you about this?

A. He told me to take that book, read it and study it, and that was the general rules for the safety department.

Q. Were you also furnished with a copy of this booklet which has been identified as "Defendant's Exhibit 1"?

A. Yes, sir, I believe that I was furnished one of those. We were given several of those books.

Q. You were given other bulletins from time to time?

A. Yes, sir, bulletins.

Q. And War Department and Ordnance Department bulletins that related to safety matters of different sorts?

A. The only bulletins I received along that line were

bulletins where they had several accidents in other parts of the country. The superintendent of my building in turn passed it to me to read.

Q. Was it part of your duties to make a report of accidents which happened to employees, and to make recommendations for correction? A. Yes, sir.

Q. I have some which purport to bear your name. Were those reports which you made from time to time, some of your reports?

A. Yes, sir; some of those. The ones identified are the ones that have my handwriting and signature.

Q. How about some of these that have simply a typewritten signature?

A. I am not so sure about them, whether that is exactly as I wrote it.

Q. You don't deny it? A. I don't deny it.

Q. Now let me read some of these recommendations or corrections which you suggested. Will you tell me if that correctly describes what you did on these various occasions? First, 4/14/43, told Mr. Walker, foreman in this department, to instruct the men to work in unison with more attentiveness in the work in the future in the handling of heavy materials. A. That is right.

Q. And under 5/21/43: Talked with Mr. Crommie, general foreman of this department, and Mr. Jaccard, assistant superintendent of the building. Suggested a larger or different type guard be put on machines. To this they both agreed. Will issue work order. Is that correct?

A. Yes, sir.

Q. Do you recognize the initials M. J. H. at the bottom? [fol. 1000] A. That is probably a stenographer, I imagine.

Q. Well, we will pass that. Now 7/8/43, Employee was instructed that no matter what jams or breaks in a machine, to first cut power then see that machine is out of motion before attempting to release or fix any part; that her health is more valuable than equipment. A. It is O. K.

Q. 10/21/44, Employee was instructed that the foreman was his superior and he is expected to follow instructions. In this instance the responsibility for his ear condition falls fully upon himself. Also instructed by me to go to the safety stores and purchase a new pair of ear defenders and to wear them at all times when working on range. Is that correct? A. Yes, sir.

Q. And again, 7/8/43, Foreman instructed to instruct employee as to the manner in which these chests are to be handled and to be alert and attentive to his work.

A. Correct.

Q. Here is 6-17-43, Foreman instructed to [reinstate] employee as to proper methods of handling this material. Is that correct? A. Yes, sir.

Q. 9/20/43, Employee was instructed by foreman to be less hasty and moves—some word which I can't make out—more observant in the future in doing his work.  
[fol. 1001] A. Yes, sir.\*

Q. 10-2/43, Employee was reinstated to always keep chain plate clean and use the utmost caution in handling plates and doing work.

A. That is not my writing. Wait just a moment. I will take it back, it is.

Q. And that one is correct, too, is it? A. Yes, sir.

Q. 10-30-43, Instructed injured to be more careful—

A. No, sir, that is not my writing.

Q. Is that your signature? A. No, sir.

Q. And this one? A. Yes, sir, that is my initial there.

Q. This one under date 8-3-43, I am of the opinion that this is an unsafe condition in the tank at the base of these machines. The employee must use a rag or sponge to wipe out the soap, and bottom of tank has numerous small particles of brass which fall from cases during the process of manufacture. I believe a screen should be installed to catch these small particles. This would prevent the small cuts and puncture wounds suffered by employee. Is that correct? A. Yes, sir.

Q. 7/28/43, Foreman was instructed to impress upon employee the responsibility that he must carry in attempting [fol. 1002] and in doing work in a first-class workmanship manner. This employee corrected the condition at time of accident. A. Yes.

Q. On 7-28-43, supervisor was instructed that position is usually filled by male employee but due to labor conditions where females are replacing the males, the employee should be given instruction as to method and procedure in doing work without hazard to themselves or others. Is that right? A. Yes, sir.

Q. Now, Mr. Darby, did you have occasion to make an audit of the building 117 with Mr. Ed Stoke?

A. Mr. Ed Stoke, I believe, was a roving supervisor. He would come in and make an audit.

Q. Did you help him make an audit?

A. Not necessarily. They would come in and make an audit of the building, and if anything was wrong you were called in on the carpet usually about it, afterwards.

Q. This memorandum says, "Audit was made by Mr. Ed Stoke, accompanied by Mr. Darby, safety supervisor of 117." Is that correct?

A. Yes, sir, on 117 Mr. Stoke would come in and several others of the supervisors would come in and say, "Well, I want to make an audit of your building."

Q. Did you make—

A. I accompanied him throughout all parts of the building. [fol. 1003] He makes audits.

Q. And the recommendations were not made by you?

A. No, sir; the recommendations were made by him. I am supposed to see that they are corrected.

Q. Mr. Darby, was it part of your duty to regularly inspect the entire property in your area for the purpose of eliminating safety hazards of all kinds.

A. Yes, sir, we would make a tour of the building, attempting to make it usually after the start of a shift. You would proceed around the building and observe machinery, equipment and employees as you attempted to make a tour of the whole building.

Q. You inspected machinery, lighting, floors, exits and storage methods? A. Yes, sir.

Q. Was it also part of your duty to recommend changes such as additional machine guards, additional safety service, new storing methods and new equipment?

A. If in our opinion we felt it was necessary we made a request to the proper department head.

Q. Was it your duty to check manual movements of employees, pointing out unsafe practices to supervisors?

A. Yes, sir, just from our own observation, if we could watch an employee and felt that the way he was handling his work was hazardous, then of course it was up to us to [fol. 1004] have a [corrections] made.

Q. That was a substantial part of your work, watch these employees and observe the manner in which they were doing their work and to determine whether you

thought it was hazardous or not and make your recommendations to his superior for correction?

A. Yes, sir, that is right.

Q. Was it part of your duty to use your knowledge of safe practices and recommend changes to decrease working hazards?

A. That would be my knowledge, that would be my own personal opinion, yes, sir.

Q. And was it part of your duty to make reports recommending general safety procedure, not connected with a particular accident? A. No, sir.

Q. It was not?

A. No, sir, I had nothing to do with setting up of procedure.

Q. I don't mean setting up the procedures, but if in your work out there you thought that some operation was being conducted in a hazardous manner, even though no accident had occurred, you would make recommendation to change the procedure?

A. I would probably talk it over with the foreman of the department, and if I thought it was serious enough, make the same suggestion in writing to my supervisor, who in [fol. 1005] turn would take it up with the different departments.

Q. And you would decide whether you thought it was serious enough to take it up with your supervisor, or whether it was of sufficiently minor importance you could let it drop?

A. Not necessarily let it drop: If it was worth observing at all it was worth discussing with the supervisors.

Q. Was it part of your duty to hold meetings of the union and safety committees promoting adherence to safety regulations? A. No, sir, I never attended one.

Q. Was it part of your duty to see that injured employees received immediate attention and care?

A. If you happened to be there, yes, sir. I have accompanied several of them to the First Aid.

Q. Was it part of your duty to submit a written report of every accident, suggesting preventive measures?

A. Yes, sir.

Q. These reports from which I have just read, are all of them correct?

A. Yes, sir. Some of them were more serious. However,

the correction doesn't amount to anything on splinters and finger wounds. Those people we didn't see until after it was all over with.

Mr. McRoberts: I think that is all, Mr. Darby.

**Redirect Examination by Mr. Bond:**

Q. These reports in which he called your attention to the [fol. 1006] fact that you had issued instructions or made suggestions to employees were all in reference to accidents, were they not? A. Yes, sir.

Q. You never reprimanded an employee that violated safety rules or practice?

A. That is one of the things we were told, we had no authority to reprimand an employee. And I believe if I remember correctly you were subject to dismissal for doing that.

Q. And in these cases in which you reported on these accidents, many of which were serious, you made recommendations, did you have anything to do with putting those recommendations into effect?

A. No, sir, we had no authority outside of the suggestion.

Mr. Bond: That is all.

**Recross Examination by Mr. McRoberts:**

Q. Judge Bond referred to this booklet, "Your Job." When did you receive that booklet with respect to the time you were employed?

A. It seems to me that I received that book at the employment office. I am not quite certain as to that, whether I got it there or after I went to the plant.

(A paper is marked "Defendant's Exhibit 8")

Mr. McRoberts: If Your Honor please, this paper which I have identified as Defendant's Exhibit 8 is of the same type and character as similar exhibits which Your Honor [fol. 1007] has rejected upon objection, and I propose to question this employee with respect—this witness, with respect to this exhibit with particular reference to the booklet "Your Job." That booklet was offered at the time of employment, I take it, as being some sort of admission

of the defendant as to whether the employee was or was not on an hourly basis and entitled to overtime or subject to the Fair Labor Standards Act. I propose to show that simultaneously herewith the company took the position that this employee was an exempt employee, and that was brought to the notice of this particular plaintiff. I think it would go to the effect of any weight that might be given to the booklet itself. I don't think the booklet means anything because all it says, where you are subject to the act you will be upheld by the act. It is our contention that they are not subject to the act. We say that giving that book is perfectly consistent with taking the position that they are exempt. And we took the position at the time and have taken that position ever since. I don't know it is binding on the employee.

Mr. Bond: That has no reference to the booklet, the booklet is not referred to. It is a notice to employee that is made and signed, an agreement to certain things, and I say it is wholly irrelevant and [material] what he might have signed in reference to his status, under the Fair Labor Standards Act, that is covered by law and not by agreement.

The Court: Sustain the objection.

[fol. 1008] Mr. McRoberts: I take it the objection will be sustained with respect to any inquiry regarding this exhibit?

The Court: Yes, sir.

Mr. McRoberts: That is all.

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AUBERT R. KETTENBRINK,  
of lawful age, produced, sworn and examined, testified on  
behalf of plaintiffs as follows:

Direct Examination by Mr. Bond:

Q. State your full name. A. Aubert R. Kettenbrink.

Q. How old are you? A. Twenty-six.

Q. Where do you live? A. 1627 Tower Grove, St. Louis.

Q. Did you serve in the armed forces during the war?

A. Yes.

Q. What branch of service? A. Air Corps.

Q. Where did you see service?

A. Sicily, Italy and Africa.

Q. What was your job in the Air Force?

A. I was a flyer pilot.

Q. In the battles over Italy and Sicily? A. Yes, sir.

[fol. 1009] Q. What kind of a weapon did you use?

A. We used P-40 and P-47 aircraft.

Q. What kind of ammunition did you use in them?

A. Fifty calibre.

Q. Who issued you those bullets?

A. We got them from our Ordnance Department.

Q. Out on the field over there in Italy and Sicily?

A. Yes, sir.

Q. Did you receive any from the St. Louis Ordnance Plant? A. Yes, sir.

Q. How did you know it was from the St. Louis Ordnance Plant?

A. Because the boxes were marked "St. Louis Ordnance Plant, St. Louis, Missouri."

Q. And the ammunition from boxes so marked was issued to you at that place for use in an airplane?

A. That is right.

Q. And you have used it? A. Yes, sir.

Q. And you came through all right? A. Yes, sir.

Q. Is that a discharge button you have there?

A. Yes, sir.

Mr. Bond: That is all.

[fol. 1010] Cross Examination by Mr. McRoberts.

Q. Pretty good ammunition, wasn't it? A. It was lousy.

Mr. Bond: I didn't ask him that, Your Honor.

Mr. McRoberts: That is all, Mr. Kettenbrink.

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**ARTHUR CLARENCE KROPP**

of lawful age, produced, sworn and examined, testified on behalf of plaintiffs as follows:

**Direct Examination by Mr. Bond:**

Q. State your full name? A. Arthur Clarence Kropp.

Q. Where do you live?

A. 24 Sylvester Avenue, Webster Groves.

Q. Are you married? A. Yes, sir.

Q. Age? A. 36.

Q. Were you formerly employed by the United States Cartridge Company? A. I was.

Q. At the St. Louis Ordnance Plant? A. Yes, sir.

Q. You entered their employment on the 2nd day of December, 1941, according to Plaintiffs' Exhibit A, and you left their employment April 7, 1945. Is that right?  
[fol. 1011] A. Yes, sir.

Q. During that time what positions did you hold?

A. I started with the U. S. Cartridge Company as adjuster trainee on September 7th. I became an adjuster in Building 103 on December 7, 1941, and I became a safety inspector on January 19, I believe is when I talked with Mr. Strickland.

Q. What was your conversation with Mr. Strickland in reference to employment in the safety department?

A. I had been injured in Building 103 and had been hospitalized in St. Luke's Hospital. After I was released from the hospital I went to Mr. Strickland in regard to just what the procedure was to get back to work. And in talking to him I made the statement I would like to be in the safety department. He agreed immediately that he would get me in the safety department and turned me over to Mr. McKittrick, the assistant director of safety.

Q. Were there any requirements made of you in reference to training? A. None whatsoever.

Q. You then went to work as safety inspector?

A. Yes, sir.

Q. Do you remember how long it was before there was any change in your title?

A. I believe it must have been almost two years.

Q. According to Exhibit A you remained in the safety [fol. 1012] inspector's department until the 27th day of February, 1944? A. Yes, sir.

Q. When the title given you was foreman, assigned?

A. Yes, sir.

Q. And you remained foreman assigned until March 25, 1945, which is two weeks before you left; when you were given a different title, Expediter and Coordinator? Is that right? A. Yes, sir.

Q. Now then, getting back to the start of your occupation, did you get one of those pamphlets, "Your job with the Ordnance Plant?" A. Yes, sir.

Q. Was there anything said to you about salary and what it was for?

A. You mean after I went to the safety department?

Q. Yes, sir.

A. Nothing was said about salary. I didn't know what I was to make until I received my first check.

Q. And you were safety inspector from January 25, 1942, until you came along here to be a foreman—no, sir, you did get raised. You started with a gross pay—in the safety department your gross wages were \$46.15 a week?

A. That is right.

Q. Now then tell us, do you know if this book here containing instructions describing the duties of the safety engineers, which I have introduced as Plaintiffs' Exhibit [fol. 1013] F, was sent to all safety engineers? A. It was.

Q. And you got one? A. I got one.

Q. Tell me then, describe your duties as you performed them out there as a safety inspector or engineer. In the first place, in what unit were you located?

A. I was located at the start in Building 104, 50 calibre manufacturing unit.

Q. Go ahead and tell what you did there.

A. The job that I performed was mainly to inspect the building, the storage areas and the production departments for good housekeeping conditions, to inspect machines and among others to see the guards were in place, to inspect and observe personnel working on the machinery and around the machines, to make sure that they wore the proper safety equipment, and to visit the first aid stations periodically and pick up accident reports written by the nurses; to go out and contact a person who had had an accident, find out what the case was, to offer suggestions to prevent them from having a recurrence, write up the

accident report and turn it in to a supervisor at the end of the shift.

Q. That is a general statement of the duties you performed during all the time you were safety engineer or supervisor—I mean inspector, safety inspector or safety [fol. 1014] engineer? A. That is right.

Q. Sticking to the time when you were safety inspector or safety engineer and performing the duties you have just outlined, tell us what you would do when you found there would be any infraction of safety rules by employees, and also tell us what you would do in case of accidents, to differentiate between the two, if there is a difference.

A. In walking around through the plant each unit had nine different departments, and each department was supervised by a foreman of production. In observing an employee that wasn't following safety practices you would contact the foreman of that department and ask the foreman to correct the condition. In accidents, you might be anywhere in the unit when an accident occurred. After you picked up an accident report from the nurse you would go out and contact the employee and find out what the cause of the accident was and offer suggestions to prevent recurrence of the accident.

Q. So it was in case of accidents you would talk to the employee and make suggestions to the employee and make recommendations? A. Yes, sir.

Q. But in case of violation of the safety regulations resulting in accident, would you have any words with the employee?

A. No, sir, we were forbidden to talk to an employee in a condition like that, we would talk to the foreman.

[fol. 1015] Q. The responsibility of making the correction was with whom?

A. Foreman of the employee under which the employee was working.

Q. And would you then include that infraction that you had noted in your report to the supervisor? A. I would.

Q. Would he include it in reports to the director? The safety director? A. Yes, sir.

Q. And you in that case made mimeograph copies of those? A. Yes, sir.

Q. Similar to the one entitled "Plaintiffs' Exhibit H", is that right? A. That is right.

Q. Mr. Kropp, these computations which have been offered in evidence, you heard Mr. Harris describe those Exhibits A and B, and you heard him point out the fact that there frequently occurred instances in both those exhibits where the employee—where deductions had been made where the employee had not worked a full 40-hour week? A. Yes, sir.

Q. I will show you Exhibit A. Let me see if there are any in your case, first. No, I don't believe I see any of your case; but I believe you assisted Mr. Harris in making [fol. 1016] these computations, didn't you? A. I did.

Q. And tell us whether or not in these computations there are frequent occurrences [were] such deductions were made?

Mr. McRoberts: I think those computations will speak for themselves.

Mr. Bond: Well, he asked me when I asked Harris, his suggestion was that I not take the time to go through but have Harris say they frequently occurred. And I did. If that was proper practice there, it ought to be here.

Mr. McRoberts: And those papers are in evidence. They will speak for themselves.

The Court: Sustained.

Q. I will ask you if in cases where there were such deductions made, did you observe how the computation was made? A. Yes, sir.

Q. Tell us how the hourly rate was computed.

Mr. McRoberts: I think those documents speak for themselves.

Mr. Bond: The figures are there and in evidence, and I am asking him what the figures are in reference to the method of computation. He has been over them.

A. The gross weekly wage was divided by a 40-hour week, which would give an hourly rate of pay for the plaintiff or the employees.

Q. And that hourly rate was multiplied by the hours of less than forty that the employees worked? [fol. 1017]

A. That is right.

Q. And the result was his deduction? A. That is right.

Q. Now you say you participated in the computations which Mr. Harris made? A. I did.

Q. Was that same method used by Mr. Harris in computing the hourly rate on which you base your claim?

A. It was.

Q. Do you know all the plaintiffs in this case? A. I do.

Q. Personally? A. Personally.

Q. And do you know whether or not they were all in the safety department out there at the plant? A. I do.

Q. In what capacity? A. Inspectors and safety engineers.

Mr. McRoberts: You are not attempting by that answer to limit them to those capacities, are you?

A. No, sir, I am not.

Q. (Mr. Bond) Some of them became foremen?

A. Yes, sir.

Q. And some became supervisors? A. That is right.

[fol. 1018] Mr. Bond: I believe that is all.

The Court: Adjourn until tomorrow morning at 10 o'clock.

Thereupon, at 4:10 P. M., July 9, 1946, adjournment was taken to 10 A. M., July 10, 1946. The proceedings then were resumed as follows:

The Court: Proceed with the case on trial.

Q. (Mr. Bond) Mr. Kropp, I see here from Plaintiffs' Exhibits A and B that you served as a safety inspector until the 27th day of February, 1944, when you received the title of foreman. Upon receiving that title, what if any difference did it make in your duties?

A. There was no difference whatsoever.

Q. Did you continue to patrol as you did in the past?

A. I did.

Q. And to report as you did in the past?

A. I reported to a new superintendent. That is the only thing.

Q. Who?

A. Mr. Coyt, who was assistant engineer of the plant.

Q. Thereafter you reported to the assistant engineer?

A. Yes, sir.

Q. On the same forms that you used. A. I did, yes, sir.

Q. And in the same manner that you had before?

A. Yes, sir.

Q. Both as to infractions of the safety rules and as to [fol. 1019] accident cases? A. Yes, sir.

Q. Now I will ask you; Mr. Kropp, I will show you here a document entitled Interdepartmental Memorandum and purporting to be signed by Mr. Clyde E. Strickland, dated May 2, 1942, and ask you what that is and what you know about it.

A. This is an interdepartmental memorandum that I received. I didn't receive this, I received one like it while I was serving as safety inspector out of training school at 3000 Laclede Street, St. Louis.

Q. Is that Mr. Strickland's signature? A. It is.

Q. And who was Mr. Strickland?

A. Mr. Strickland was the director of safety at the United States Cartridge Company.

Mr. Bond: I ask that be marked "Plaintiffs' Exhibit L." (The Exhibit is marked as requested.) And I offer Plaintiffs' Exhibit L in evidence.

Mr. McRoberts: Your Honor please, I fail to see the relevancy of this exhibit.

Mr. Bond: It sustains our contention that the authority did not go below the director's office, and it is an express statement over the director's signature that all problems are to be routed through his office. And it is certainly relevant on the question of where the authority existed.

[fol. 1020] Mr. McRoberts: The trouble is, the exhibit doesn't prove that particular point, if it is offered for that purpose.

Mr. Bond: I think it does. It is a statement of the director in reference to how problems are to be handled, which seems to me relevant to his defense of exemption.

The Court: Admitted subject to the objection.

Mr. Bond: "Department of Safety." This particular one is addressed to Mr. Ledru Trimble.

"Subject: Safety Department Personnel. From Mr. Clyde E. Strickland, dated May 2, 1942.

"Effective Monday May 4th the Safety Department Personnel will be as follows: Mr. J. T. McKittrick will remain assistant director of safety. Mr. S. L. Hartling will be assistant to director. All problems of the Safety Department will be routed through these two men, and any orders, instructions or procedures of this department shall be followed. Your fullest cooperation is expected.

"The following men will be Chief Inspectors of Plants. No. 1 and 2:

Homer Hoffman  
Robert Williams  
Alfred Kemp  
Paul Jamison  
Paul Johnson

"These men will be responsible for the safety inspectors on the shifts which they supervise. Cooperation of inspectors is fully expected.

CLYDE E. STRICKLAND."

[fol. 1021] Mr. Bond: You may cross examine.

Cross Examination by Mr. McRoberts:

Q. Mr. Kropp, you were originally hired at the St. Louis Ordnance Plant in September of 1941? A. That is right.

Q. As a trainee. And I [believed] you worked until some time in January of 1942 on various hourly pay jobs?

A. Yes, sir.

Q. And during all of that time while you were on an hourly rate you were paid for all overtime that you worked in excess of forty hours per week? A. Yes, sir.

Q. And during all of that time you worked a 48-hour a week shift, is that correct? Or substantially all of the time? A. Yes, sir.

Mr. Bond: Your Honor, this is an awfully involved question.

A. I don't really remember whether I did or not.

Q. The plant was working three shifts a day, wasn't it?

A. No, sir, not when I started.

Q. It was working three shifts a day while you were still on an hourly basis, wasn't it? A. No, sir.

Q. You were working 8-hour shifts six days a week?

A. Yes, sir.

Q. And you worked 8-hour shifts six days a week during [fol. 1022] all the time you were on an hourly basis?

A. No, sir, I was injured.

Q. While you were working, then?

A. While I was working, yes, sir.

Q. Disregarding any time that you were laid off?

A. Yes, sir.

Q. And then you were transferred to the safety department? A. Yes, sir.

Q. And what were you told as to what your hours would be as a safety inspector?

A. I wasn't told what my hours would be until after I had worked approximately three or four days.

Q. When you were transferred to be a safety inspector were you told that you would work on the same shift with the men that worked there? A. Yes, sir.

Q. And the same number of days? A. Yes, sir.

Q. When you say you were not told your hours, you mean you were not told about reporting a half hour ahead of the shift until—

A. I was told what time to report, but I don't know whether that was a half hour before the regular shift or not, at that time.

Q. And you were not told that until a day or two or [fol. 1023] three after you started to work? A. No, sir.

Q. But you were told that you would work six days a week? A. Yes, sir, I was.

Q. And you were told that your salary would be \$200 per month.

A. No, I wasn't at that time. As I stated yesterday, I didn't know what my salary would be until after I had received my first pay check. And at that time I found out what I was making. I didn't realize I was working on a salary basis until I had received about three pay checks because I was continuing to ring in a time-card and ring out a time-card, and I figured it was on the same basis as when I was an hourly employee.

Q. Well, you did realize you were on a salary basis and continued on a salary basis as long as you were with the company? A. Yes, sir.

Q. And your salary started at \$200 a month and gradually increased until you received \$280 a month?

A. Yes, sir.

Q. And the details of these increases are shown in the tabulation, Exhibit A? A. Yes, sir.

Q. Now, Mr. Kropf, when you were employed as a safety engineer you were furnished with a copy of the general instructions similar to Plaintiffs' Exhibit F, were you not? [fol. 1024] A. When I started--sometime after I had started in the safety department.

Q. About how long afterwards?

A. I would say it was a week after.

Q. And you were told that those were your instructions as to your duties and responsibilities, were you not?

A. Yes, sir.

Q. And among the duties which you were given by these instructions were to observe and correct unsafe methods and conditions, and to observe and correct any unsanitary or unhealthy condition? A. Yes, sir.

Mr. Bond: Object. What he is reading from is not in this exhibit. At least, I haven't been able to find it. Oh, I beg your pardon, I am wrong.

Q. How did you go about carrying out that particular part of your instructions?

A. As I said yesterday, the building in which I was first assigned, Building 104, had nine departments, each department was under a foreman of production. Whenever we found an unsafe condition in housekeeping or any machine we would contact the foreman in whose department the condition was found and request that it be corrected.

Q. To interrupt, that would also apply to unsafe methods of operation by the employees? A. Yes, sir.

[fol. 1025] Q. Unsafe manual operations, unsafe handling of tools and equipment? A. Yes, sir.

Q. And when you found any of these conditions you would go to the supervisor, to the foreman in charge of that particular part of the plant and you would tell him about the unsafe condition which you had observed? Is that correct? A. That is correct.

Q. And you would tell him what should be done about correcting it, and how it should be corrected or what particular— A. We would make recommendations.

Q. You would make recommendations to him as to the method which he should use in correcting the unsafe condition? A. Yes, sir.

Q. Those recommendations or those instructions you didn't give to the employees themselves? A. No.

Q. You dealt with supervision? A. That is correct.

Q. And you reported the conditions to the supervision and advised the supervision as to what should be done to correct it?

Mr. Bond: Object to the word "advise." He said "recommend."

Q. You recommended it? A. Yes, sir.

[fol. 1026] Q. Now that particular part of your work, in general that was the bulk of your work? The bulk of your time was spent in doing that sort of thing, wasn't it?

A. Yes, sir. On some days the bulk of our time was taken on accident reports.

Q. But on the average? A. On the average.

Q. On the average the greater part of your time was spent in inspecting and observing unsafe conditions, unsafe operations and recommending—to use that word—to supervision what should be done about correcting that condition? A. Yes, sir.

Q. Mr. Kropp, when you would go through the plant and you would see an employee performing some operations which you thought were unsafe, how would you determine whether it was unsafe or not? What would make you conclude that it was or was not unsafe?

A. I had been at the training school for three months training on these machines and we had been taught down there the proper method in which to work at these machines. That is the way I would determine whether it was unsafe or not.

Q. You would decide from your observation whether this man was doing his work in a safe or an unsafe way?

A. Yes, sir.

Q. If you thought it was unsafe, you would recommend [fol. 1027] correction to the supervisor? A. Yes, sir.

Q. Among your instructions, for example, was to prevent horse-play; I believe? A. Yes, sir.

Q. What did you understand the term "horse-play" to mean? That was considered an unsafe, hazardous prank, wasn't it?

A. Yes, sir, wrestling, throwing things at each other, cutting up with each other around machines.

Q. How did you determine when just ordinary high spirits ended and horse-play began?

A. If an employee was working, high spirits or anything like that would be considered horse-play. He was supposed to be working at the machines.

Q. Let me put it this way, Mr. Kropp: You would exercise your best judgment as to whether the thing that an employee was doing went over the line of safety and into dangerous horse-play? Is that it?

A. Anything that was out of the ordinary that was cutting up, or anything like that.

Q. Anything you concluded was out of the ordinary, you would consider as horse-play and therefore dangerous?

A. Yes, sir.

Q. And made recommendations for its correction?

A. Yes, sir.

[fol. 1028] Q. Those recommendations being made to supervision? A. That is correct.

Q. You were told to watch and see if employees working there operated at unsafe speeds, I believe.

A. That is correct.

Q. How did you determine whether a speed was safe or unsafe.

A. Later, speed limits were posted in the building for the high, low lift, trucks and tractors, and the times they were to be operated were handed down to us.

Q. Originally, how did you determine? Was it a matter of your own judgment?

A. There was no running allowed in the plant whatsoever. Anybody running—

Q. I am talking about while they were doing their work at unsafe speeds.

A. That was only relevant to the vehicles that were operated in the production areas.

Q. Now Mr. Kropp, you too made reports from time to time of accidents that came under your jurisdiction, did you not? A. Yes, sir.

Q. And made recommendations as to what should be

done to correct the unsafe condition and sometimes issued orders and instructions in that connection, didn't you?

A. Yes, sir.

[fol. 1029] Mr. Bond: I submit—You asked him what was contained in the report. The report is the best evidence.

Mr. McRoberts: I will withdraw it.

Q. You made these reports from [—] to time, and these reports correctly describe what you did on the different occasions? A. Yes, sir.

Q. In the performance of those duties as a safety engineer? A. Yes, sir.

Q. Now will you follow this with me, and I will try to make this as speedy as possible to put into the record these statements of what you did on different occasions; and correct me if I am wrong or tell me if I am correct: 12/16/43, had large pieces of scrap sheet metal picked up from the floor. Suggest the two metal scrap boxes in rear be combined into just one large box, so that large pieces of metal will stay in box. Is that correct?

A. Correct.

Q. 8/28/43, this tractor was taken out of service and was taken to the garage at once to have the brakes repaired. A. Is that the same?

Q. No, a different report.

A. I mean is it the same as this one I have my signature on? These typewritten reports are not identified.

[fol. 1030] Q. All right, I will confine it to the ones that have your signature on them. I am reading above your signature now: "This tractor was taken out of the service and was taken to garage at once to have brakes repaired." Is that correct? A. Yes, sir.

Q. 12/18/42, I have spoken to Mr. St. Mary about the need of adequate instructions be given to employees loaned from one department to another. These people should also be given gloves or any other protective devices used by the department. A. Correct.

Q. 12/30/42, This is the third accident of similar nature on this machine. With the help of millwright Machine Shop Department we have been trying to make a guard for this part of the jacket turn machines. A. Correct.

Q. Did you make recommendations from time to time

for the transfer or disciplining of employees in connection with safety matters? A. I think I did, yes, sir.

Mr. McRoberts: Then I will not bother you to read specific examples where that was done.

Q. And on numerous occasions you make recommendations for new guards or safety guards which had to be or should be applied to the different machines in operation? A. Yes, sir.

[fol. 1031] Q. You did this sort of thing on occasions, did you not? 2/10/45, Mr. Percival, superintendent of porters, was asked to reprimand employee for failure to report accident immediately. And again you asked that he also do this sort of [this]: IRP 43, requested that failure to report injury at time of happening. IRP 43 was a form used by the company to make record of any type of disciplinary action that was taken? Is that correct? A. Yes, sir.

Q. And you from time to time when an accident occurred instructed the employee yourself as to how to conduct himself in the future so as to avoid similar action, did you not? A. Yes, sir.

Q. And to sum up the type of work that you did out there, did you regularly inspect the entire property in your area for the purpose of eliminating safety hazards of all kinds, inspecting machinery, lighting, floors, exits and storage of materials?

Mr. Bond: Just a moment. Object to that as calling for a conclusion, and it is grouping a whole lot of things in one question. I think he ought to be asked what he did. Also object because it assumes what the purpose of the performance of the duty was.

The Court: He may answer.

A. Yes, sir; I did.

Q. Did you also recommend changes, such as additional [fol. 1032] machine guards, additional safety service, new storing methods and new types of equipment? A. I did.

Q. To whom would those recommendations be made? To your superiors, or to the production supervision, or both? A. Both.

Q. Did you check the manual movement of employees pointing out unsafe practices to the supervisors of such employees? A. I did.

Q. And make recommendations for their corrections?

A. Yes, sir.

Q. And using your knowledge of safe practices, did you recommend changes calculated to decrease working hazards? A. Yes, sir.

Q. Did you make report recommending general safety procedure not connected with a particular accident? What I am trying to do is to distinguish between the specific recommendations that you made in the case of each individual accident. But did you on occasions make some general recommendation that didn't arise out of an accident but arose out of your general observation and experience out there?

A. I don't remember any such instances.

Q. Did you ever hold meetings of unit and safety committees promoting adherence to safety regulations through employee cooperation?

[fol. 1933] A. I was an observer in the meetings, I didn't hold the meetings.

Q. Did you give advice, instructions and recommendations with respect to safety in those meetings? A. No, sir.

Q. Who did?

A. The meeting was under supervision of a chairman and a vice-chairman and recording secretary, and the discussion was all among the members in the meeting.

Q. Those were the employees, the workers and all?

A. Yes, sir.

Q. And you were there as a safety engineer to discuss safety matters with them?

A. We were not supposed to hold a meeting. We were not supposed to do anything unless a question was asked, and answer.

Q. In other words, you were there to answer questions with respect to safety matters that the workers and employees would ask?

Mr. Bond: Object to that form of interrogation. Let him ask him what he was there for.

The Court: Objection sustained.

Q. What did you do at those meetings?

A. We were observers, that is all. We were on the side line.

Q. What did you do with respect to any questions that [fol. 1034] were asked on safety matters?

A. Quite often we would take them to our supervisors of the safety department.

Q. If you knew the answer, did you give the answer right then and there? A. Give the answer.

Q. If you didn't know the answer you would go to your superior and try to find out? A. That is right, yes, sir.

Q. Did you also see that injured employees received immediate attention and care?

A. That was up to the medical department or the nurses in the building.

Q. Did you see that they got to the medical department or nurses? A. Yes, sir.

Q. Did you submit a written report of every case, suggesting preventive measures?

A. No, sir; only the hospital cases.

Q. You did that in the hospital cases? A. Yes, sir.

Q. By "hospital cases" you mean cases that went up to the company hospital to have a cut dressed or treatment of some sort given? A. Yes, sir.

Mr. McRoberts: I think that is all.

[fol. 1035] Redirect Examination, by Mr. Bond:

Q. Mr. Kropp, Mr. McRoberts called your attention to certain extracts in the number of some six or eight—the record will show the exact number—of your safety inspection reports as safety inspector at the plant. About how many of those safety inspection reports did you make during the four years you worked?

A. You mean accident reports?

Q. Yes, sir, accident.

A. There were some days when you made forty or fifty of such reports.

Q. You mean written ones?

A. Yes, sir, my total number must run up in the hundreds.

Q. And those reports are in the records of the corporation? A. Yes, sir.

Q. And the ones that he picked out and called your attention to here all relate to accidents, don't they?

A. Yes, sir.

Q. Where you spoke to the employee? A. Yes, sir.

Q. Now in the cases where you would observe infractions of safety rules or safety practices, would you reprimand or speak to the employee in those cases? A. No, sir.  
[fol. 1036] Q. You would leave that disciplinary action to his foreman? Is that right? A. Yes, sir.

Q. And you would report it to your own supervisor who would pass it up to the director.

A. I believe I showed you an example of such report, "Plaintiffs' Exhibit H".

Q. Now in the cases where you made the recommendations that you called their attention to or at other times, did you have anything to do with putting those recommendations in effect? A. No, sir.

Q. Now in this matter of whether or not an employee—or making a decision as to whether or not an employee was engaged in an unsafe practice, did you have some standard safety rules out there? A. Yes, sir.

Q. Were you familiar with them? A. Yes, sir.

Q. And in determining whether or not he was guilty of an unsafe practice, you were guided by whether or not he conformed to those rules? Isn't that so? A. That is correct.

Q. And in reference to operation of machines, were you advised as to the correct way that a machine should operate?

[fol. 1037] Mr. McRoberts: Object. It is very leading and suggestive, cross examination of his own witness.

Mr. Bond: Well, I don't know. It is directing him to a matter.

(Last preceding question was read)

The Court: He may answer.

A. I was.

Q. And whether or not you reported an infraction was whether or not that practice was followed? Isn't that so?

Mr. McRoberts: Object as leading.

The Court: He may answer.

A. I would say, yes, sir.

Q. Did you have any part in the making of these safety rules? A. No, sir.

Q. Did you have any part in the determination of how those machines should operate? A. No, sir.

Mr. Bond: I believe that is all.

Recross Examination by Mr. McRoberts:

Q. These safety rules that you speak of, those were rules made by the management and not by you safety engineers?

A. I don't know who made the rules, sir.

Mr. McRoberts: That is all.

Mr. Bond: That is all.

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[fol. 1038] WALTER L. SCHULTE,  
of lawful age, produced, sworn and examined, testified on  
behalf of plaintiffs as follows:

Direct Examination by Mr. Bond:

Mr. Bond: I am calling Mr. Schulte as an officer of the defendant corporation for cross examination as my witness, and for the production of records.

Q. Mr. Schulte, state your full name, please?

A. Walter L. Schulte.

Q. And where do you live?

A. 449 Foreston Place, Webster Groves, Missouri.

Q. What is your occupation? A. Controller.

Q. For what corporation?

A. United States Cartridge Company.

Q. How long have you held that position?

A. Over five years.

Q. All during the period of operation of the St. Louis Ordnance plant?

A. I will correct that. I have been Controller since December 1, 1943.

Q. Oh, I see. Prior to that were you in the employ of the company? A. Yes, sir.

Q. And in what capacity?

[fol. 1039] A. Assistant Controller.

Q. So all your employment has been in connection with the records and files, or at least that has been part of your duty? A. Yes, sir.

Q. Now I believe I have caused to be served upon you a subpoena duces tecum asking you to produce, among other things, the records of all inbound shipments of material into that plant during its operation. Is that right?

A. Yes, sir.

Q. And I called upon you in reference to your compliance with that subpoena? A. Yes, sir.

Q. And we discussed the volume of records and I told you that I discussed that question with your counsel, and you made it clear to me that they were very voluminous, didn't you? A. That is correct.

Q. And bringing all the records covering all independent shipments into that plant would be, if not impractical, a very burdensome, difficult operation? A. That is right.

Q. And so we selected illustrative records, did we not? A. That is correct.

Q. As to certain leading materials. I believe we took [fol. 1040] brass, lead, steel and powder. A. Yes, sir.

Q. As being among the important raw materials that were used by the plant in the manufacture of bullets. Isn't that right? A. That is right.

Q. Now taking up the brass first, have you there the illustrative records that were picked out? A. Yes, sir.

Q. I believe we found that some of those purchases of brass were made by the United States Cartridge Company and some of the purchases were made by the Army Ordnance, isn't that so? A. That is correct.

Q. You have brought in records covering both?

A. Yes, sir.

Q. Now describe for the record the nature and character and the amount of the records which you have brought in here in reference to inbound shipments of brass paid for by the United States Cartridge Company, stating where they came from and who they were bought from.

A. I have a purchase order covering 16,000,000 pounds of coil brass in the amount of \$2,720,000 to the Western Cartridge Company, East Alton, Illinois.

Q. Go ahead.

A. This brass was paid for by a check drawn on funds furnished by the United States Government and received—

[fol. 1041] Q: Wait a minute. I asked you first about the purchases made by the corporation. That was paid for by your corporate check, wasn't it?

A: It was paid for by a corporate check drawn on a special advance fund on funds furnished by the Government.

Mr. McRoberts: Let the witness finish his answer.

Mr. Bond: The source of these funds doesn't appear from the records.

Mr. McRoberts: The witness knows what the facts are.

Mr. Bond: I am limiting my cross examination to certain features. He is an adverse witness, and I ask him now to tell what is in the records and he is putting in facts that do not appear on the records, and I object.

Mr. McRoberts: Let the records speak for themselves.

Q: Does the source of that money speak from those records that you have in front of you there? A: It does.

Q: Where? A: Here.

Q: And the United States Cartridge Company special account, Contract WD, according to this record shows that followed a check "United States Cartridge Company special advance account, Contract WD 491." A: Yes, sir.

Q: And that was the check used in payment for that material? A: That is a copy of the check.

Q: And the material was purchased by a department of the United States Cartridge Company?

A: That is correct.

Q: And shipped on your instructions into the plant? Is that right? A: That is correct.

Q: From East Alton, Illinois? A: That is correct.

Q: Now then, have you any more such?

A: I have a shipment of 432 coils of sheet bronze from the American Brass Company, Waterbury, Connecticut.

Q: And that was received in the plant, was it?

A: Received in the St. Louis Ordnance plant.

Q: Tell us some more. Have you any more, or are they all on brass?

A: I have receiving inspection reports covering numerous shipments of brass received from the Bridgeport Brass Company, purchased by the United States Government.

Q. You put in all you have on the purchases from the American Brass Company and Western Brass Company, have you?

A. No, sir; there is a shipment received from the Chase Brass & Copper Company, Waterbury, Connecticut.

Q. You and I dictated a memorandum of what you were [fol. 1043] to bring in, didn't we? A. Yes, sir.

Q. That first one, which one have you described here? Look at the memorandum and check it for me. Suppose you follow that memorandum?

A. This is the first one that appears on the list here. Here is one here, but they are not in order.

Q. Suppose you describe that one, then.

A. I have a copy of a purchase order to the Western Cartridge Company, East Alton, Illinois, covering 14,370,000 pounds of brass for calibre 50 case cups.

Q. From where?

A. From the Western Cartridge Company, East Alton, Illinois.

Q. Is there a check in payment there?

A. Copy of the check is not here, no, sir.

Q. All right; now, take the next item on that list.

A. I have a purchase order to the Western Cartridge Company, East Alton, Illinois, for 16,000,000 pounds of brass for 30 calibre cartridge cases in the amount of \$2,720,000.

Q. Where did that come from? A. East Alton, Illinois.

Q. And what is the next check, the next item?

A. I have a copy of a purchase order to the Western Cartridge Company, East Alton, Illinois, covering 3,900,000 pounds cartridge brass for calibre 30 case strip in the [fol. 1044] the amount of \$612,250.

Q. Are there any other items there on brass bought by United States Cartridge Company?

A. I have a copy of a check in the amount of \$273,803.86.

Q. With the same notation on it as you just read in the record? A. That is right.

Q. Covering what? Is that a different shipment?

A. Covering a different shipment.

Q. What is the shipment?

A. I don't have the total quantity here computed, but it represents \$273,803.86.

Q. From where?

A. From the Western Cartridge Company, East Alton, Illinois.

Q. And shipped into the plant in Missouri. Is that right? A. That is right.

Q. Did it come by rail or truck? A. Truck.

Q. Would it be that Anderson Trucking Company?

A. That is correct.

Q. Is that all you have on brass? A. No.

Q. Oh, you have some bought by the Government on brass?

A. I have the receiving and inspection reports on brass purchased by the Government. That is, all the papers I [fol. 1045] have on that.

Q. Some brass. That brass you are talking about now, that was bought by the Government? A. That is not.

Q. Oh, isn't it? This file of papers you have now covers purchase of brass or consists of receiving and inspection reports covering receipts of brass from the Bridgeport Brass Company of Bridgeport, Connecticut? Isn't that right? A. Yes, sir.

Q. The shipments being made from Indianapolis, Indiana. Is that correct? A. That is correct.

Q. And the material is described in the reports, and there is a notation in the corner, "purchased under purchase order No. 'Government free issue'?"

A. That is correct.

Q. That means it was bought by the Government and came into the plant. A. On a free issue basis.

Q. That covers brass, doesn't it?

A. Well, there are three additional here.

Q. These are bills of lading. Well, just tell us what they are, the three of them. Bills of lading?

A. I have copy of a check, bills of lading, invoices and receiving reports covering shipment of 432 coils sheet [fol. 1046] bronze from the American Brass Company, Waterbury, Connecticut.

Q. All right.

A. I have a copy of a check and bills of lading, and invoice and receiving report covering 598 coils of brass from the American Brass Company, Waterbury, Connecticut. I have copy of a check, receiving report and bills of lading, and invoices, covering 637 coils of sheet brass from the Chase Brass & Copper Company, Waterbury, Connecticut.

Q. And those checks bear that same notation that we read in the record? A. That is correct.

Q. And they relate to purchases made from these companies as you described by the United States Cartridge Company? A. That is correct.

Q. Now, then, I believe the fact is, Mr. Schulte, that these papers which we have just offered in evidence are illustrative of the purchases of brass during the period of operation of this plant? A. That is correct.

Q. And that if all the records were produced it would show a very large movement of this material from points outside the State of Missouri both on purchases by the corporation as you described and on Government free issue purchases as you have described? A. Correct.

[fol. 1047] Mr. McRoberts: Are you offering those papers in evidence?

Mr. Bond: No, sir, I am not going to do that. I don't want to burden the record with the material.

Mr. McRoberts: You made a statement a while ago of these things you would offer in evidence. I think the record should have—

Mr. Bond: I say we brought them down here as illustrative, and I have had your controller state the character of them into the record, and I think it wouldn't be necessary to go beyond that and burden the record with all of this material, which would be very difficult to assimilate in any record or to incorporate in any record, which I do not think it is necessary.

Mr. McRoberts: I have no objection to typical copies of these papers being offered in evidence and the witness testifying that they are typical, but I do object if the record is going to be left simply with a summary statement as to what these documents are.

Mr. Bond: Well, I suppose if you insist on having these tabulations in the record I will have to put some of them in, but I cannot see what purpose it is. If there is any matter or description on these papers that you think is helpful to your defense, that the witness hasn't pointed out or I haven't read into the record, I would be glad

to have you do so. I have put in all that these records [fol. 1048] show, that I think have a bearing for the purpose of which I am offering them. If there is anything in them which you think has a bearing on your defense, I ask you to point it out. But do you think, Your Honor, that we ought to go farther than that and put in all of this material or even part of it in the record, when it is purely a collateral question in the case?

The Court: Am I expected to answer?

Mr. McRoberts: I suggest perhaps the Court would like to control the matter somewhat—

Mr. Bond: Well, you won't agree that there can be stated into the record what the records show without putting in the actual records themselves.

Mr. McRoberts: I am not insisting that all papers go on. I have no objection to a typical one of this file being offered in evidence and the witness testifying whether it is or is not typical of the balance and a similar procedure being followed with respect to the other documents.

Mr. Bond: That will take a whole lot because here on brass alone there will be 6 or 7, and there are 4 or 5 others. There will be 25 or 30 of these tabulations that will have to go into the record even if we only use the top paper. And if we use the whole file it would make 50 or 60 pages of material altogether. I can't understand Counsel's purpose exactly but I suppose I will have to be guided by it.

The Court: It is time for recess. I wonder if Counsel [fol. 1049] cannot come to some agreement on that, just what is necessary to put in? Counsel themselves ought to be able to have an agreement.

(Brief discussion by Counsel off the record.)

The Court: Announce a 5-minute recess.

Thereupon, at 11:15 A. M., July 10, 1946, a brief recess was taken. The proceedings were then resumed as follows:

Mr. Bond: Where are those records we have assembled together? (The witness procures some papers.)

Q. (Mr. Bond) Mr. Schulte, I believe during recess we have selected from the material that you brought down here certain documents which we think can be used as typical. Is that correct? A. That is correct.

Q. Now then, here are the ones that we took, covering —we were talking about brass. We will stick to the brass for a moment, covering brass. In the first place, how many typical documents have we there? (Witness produces some papers.)

Mr. Bond: I will have those three documents marked for identification as "Plaintiffs' Exhibits M-1, M-2 and M-3."

(The documents were marked as requested.)

Exhibit M

7/10/44

AP

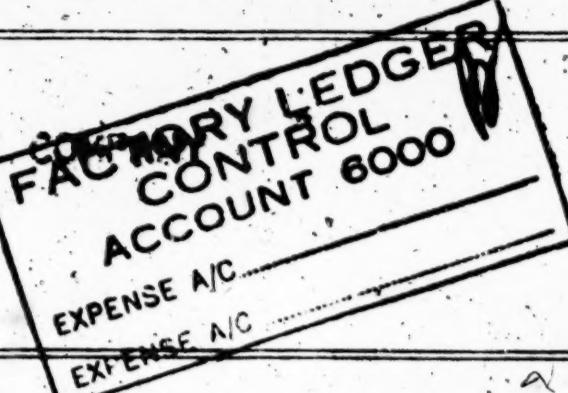
3	TRIPPLICATE
	GENERAL ACCOUNTING DEPT.

THE UNITED STATES CARTRIDGE COMPANY  
ST. LOUIS ORDNANCE PLANT  
ST. LOUIS, MISSOURI

## PURCHASE ORDER

TO: WESTERN CARTRIDGE COMPANY  
ADDRESS: EAST ALTON,  
ILLINOIS  
*2920*

ENTER THIS ORDER IN ACCORDANCE WITH THE TERMS OF YOUR BID DATED  
AND IN CONFORMITY WITH TERMS OF THE UNITED STATES GOVERNMENT CONTRACT W-ORD-481 AND  
WITH CONDITIONS AND INSTRUCTIONS ON THE REVERSE SIDE HEREOF. ANY CHANGE MADE IN THIS  
PURCHASE ORDER EXCEPT UPON WRITTEN AUTHORITY FROM OUR PURCHASING AGENT WILL RENDER  
IT VOID. A VARIANCE IN QUANTITIES NOT TO EXCEED  $\frac{1}{2}$ % OF THE STATED AMOUNT WILL BE  
ACCEPTED AS COMPLIANCE WITH THE TERMS OF THE PURCHASE ORDER.



PURCHASE ORDER NO.

ST. L. B

53625

DATE

9/23/44

## CERTIFICATION

THE UNDERSIGNED PURCHASER HEREBY  
REPRESENTS TO THE SELLER AND TO  
THE WAR PRODUCTION BOARD THAT HE  
IS ENTITLED TO APPLY OR EXTEND THE  
PREFERENCE RATING FOR ALL  
ITEMS SHOWN ON THIS PURCHASE  
ORDER. THAT SUCH APPLICATION OR  
EXTENSION IS IN ACCORDANCE WITH  
PRIORITIES REGULATION NO. 3 AS  
AMENDED, WITH THE TERMS OF WHICH  
THE UNDERSIGNED IS FAMILIAR, AND  
THAT THE MATERIAL ORDERED HEREIN  
IS TO FILL ORDERS IN GROUP CLASSI-  
FICATION:  
ARMY: 8.20 AMMUNITION (SMALL ARMS  
BELOW 20 MM).

ITEM	QUANTITY	DESCRIPTION	PRICE	AMOUNT
1.	14,370,000 LBS.	CARTRIDGE BRASS FOR CAL. .50 CASE 800, STRIP IN ACCORDANCE WITH U.S.C.C. SPEC. #1101-7, ISSUE 6, DATED DECEMBER 24, 1942. SIZE .254" TO .259" X 5-1/16" CWT 15.75		2,263,275 00
		ISSUE 6, DATED DECEMBER 24, 1942. SIZE .254" TO .259" X 5-1/16" CWT 15.75		2,263,275 00

DC/ SHIP TO: ST. LOUIS ORDNANCE PLANT

FOR ACCOUNT OF: THE UNITED STATES CARTRIDGE COMPANY

4300 GOODFELLOW (RD) ST. LOUIS, MISSOURI

SHIP BY

VIA

F. O. B.

OUR PLANT

10TH AND 25TH

TERMS: NET 30 DAYS - LESS % DAYS, AS DEFINED ON REVERSE SIDE.

DURING OCTOBER AS SCHEDULED

REQUIRED DELIVERY: STARTED  
MARK PACKAGES, CASES & CARS ABOVE PURCHASE ORDER  
NUMBER  
PACKAGE, VENDOR'S NAME, AND THE  
FOLLOWING SPECIAL MARKINGS → POINT

BUILDING 215

THE UNITED STATES CARTRIDGE COMPANY

REQUISITION NO.

10675

APPROPRIATION

CONTRACT W-ORD-481 ART. 11-A PAR. 1

PURCHASE APPROVED BECAUSE OF REASONS NUMBERED

1. LOWEST PRICE
2. EARLY DELIVERY
3. BETTER QUALITY
4. BETTER OR REQUIRED DESIGN
5. ONLY AVAILABLE SOURCE
6. LOCATION

APPROVED

PURCHASING AGENT

CONTRACTING OFFICER'S REPRESENTATIVE

Major,



## Plaintiffs' Exhibit M-3.

P1 Ex M3

1	ORIGINAL	ST. LOUIS ORDNANCE PLANT ST. LOUIS, MISSOURI	
RECEIVING DEPT. OFFICE		U. S. C. CO. CONTRACT W-ORD-491      W. C. CO. CONTRACT W-ORD-481	
GOV'T OR PRO. BL. NO.	MA 13751	RECEIVED FROM (SHIPPER)	BALTIMORE PARTS GRASS CO.
SHIPPING WEIGHT	82,210	VENDOR (WHEN NOT SHIPPER)	
FREIGHT CHARGES	\$	CAR NUMBER	CLM 2580654
DRAYAGE CO.	PREPAID COLLECT	SEAL NUMBER	9719147470
DRAY TICKET NO. OR PACKING SLIP NO.		CARRIER	RAIL
SHIPPED TO:		F.O.B. POINT	INDIANAPOLIS, IND.
OTHER PURCHASE ORDERS COVERED BY THIS SHIPMENT.		REIMBURSEMENT BY FINANCE OFFICER AT	
DATE 7-17-43 NO. 44743-21 BUILDING NUMBER 1053 RECEIVING STATION CENTRAL STORES QUALITY INSPECTION YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> PURCHASE ORDER NO. 5255 DEPT. NO. 5255 FINAL <input type="checkbox"/> PARTIAL <input checked="" type="checkbox"/>			

## ARTICLES INSPECTED, ACCEPTED AND RECEIVED.

NO. OF PKGS.	QUANTITY RECEIVED	QUANTITY ACCEPTED	STOCK NUMBER	DESCRIPTION (MUST AGREE WITH PURCHASE ORDER)	UNIT
640	82,653	82,653	MS. 2580659	2580659 X 5 1/16, CARTRIDGE, BRASS, FOR .50 CAL. CASE GUNS U.S.C.P.Spec. 1101-1 ITEM 1 - LOT # 415	LB

CONTRACT # W-294-DRD-888

RECEIVED 7-17-43  
ST. LOUIS ORDNANCE PLANT  
MS. 2580659 X 5 1/16, CARTRIDGE, BRASS, FOR  
.50 CAL. CASE GUNS U.S.C.P.Spec. 1101-1  
ITEM 1 - LOT # 415

CONTRACT # W-294-DRD-888

## LIST OVERAGES, SHORTAGES, DAMAGES AND REJECTIONS - \* MUST SHOW DISPOSITION CODE

QUANTITY	ARTICLE	REMARKS	SHIPPER NO. OR WORK ORDER	DISPOSITION CODE
		Our WT. 82,653 Their WT. 82,210 OVER. 443 lbs		

I CERTIFY THAT THE ARTICLES LISTED ON THIS REPORT WERE INSPECTED AND ACCEPTED BY ME THAT THEY CONFORM TO THE CONTRACT REQUIREMENTS; THAT THE ARTICLES SHOWN AS REJECTED WERE REJECTED FOR THE REASONS STATED AND THAT THE FOREGOING IS CORRECT.

7-17-43  
C. J. Dill  
AUTHORIZED INSPECTOR

DATE

APPROVED

DATE

DEPARTMENT APPROVAL

DATE PURCHASING DEPT. FOR CODES B.C.J.  
MATERIAL RECEIVED BY STORED TO STORE RECORD

ST. KEEPER      STORES RECORD CLERK

## MEMORANDUM RECEIPT

RECEIVED FROM ORDNANCE DEPT.  
MATERIALS LISTED

AS PER YOU. NO.

NAME OF CON. 20  
CITY

I CERTIFY THAT THE ARTICLES LISTED ON THIS REPORT WERE RECEIVED BY ME IN THE QUANTITY AND CONDITION STATED, AND THAT THE SAME HAVE BEEN TAKEN UP ON THE STOCK RECORD CARDS OF THIS STATION.

SIGNATURE OF ACCOUNTABLE OFFICER

RANK AND DESIGNATION

DATE

D. V. NO.

SHEET OF SHEETS

## DATE \*DISPOSITION CODE - USE ONE CODE LETTER ONLY

A CLAIM AGAINST CARRIER FOR DAMAGE OR SHORTAGE OR OVER. TO BE ACCEPTED AND PAID FOR  
NOT TO EXCEED 10% OF PURCHASE PRICE. OVER. TO BE RETURNED TO SELLER  
FORWARD CRITICAL ITEMS & HIGH FAULTS ONLY  
REFUSED RETURN TO SELLER  
SUBSTITUTION TO BE ACCEPTED AND PAID FOR  
NOT ACCEPTABLE RETURN TO VENDOR

**Plaintiffs' Exhibit O-3.**

P1 - 03

ST. LOUIS ORDNANCE PLANT ST. LOUIS, MISSOURI	
<b>RECEIVING AND INSPECTION REPORT</b>	
U. S. C. CO. CONTRACT W-ORD. 481	<input type="checkbox"/> W. C. CO. CONTRACT W-ORD. 481
<b>RECEIVED</b> FROM (SHIPPER)	
VENDOR (WHEN NOT SHIPPER)	
CAR NUMBER	SEAL NUMBER
CARRIER	
F.O.B. POINT	
SHIPPING POINT	
REIMBURSEMENT FINANCE OFFICE	
BY THIS SHIPMENT.	

DATE	[REDACTED]			
NO.	[REDACTED]			
BUILDING NUMBER	[REDACTED]			
RECEIVING STATION	[REDACTED]			
QUALITY INSPECTION	YES	<input type="checkbox"/>	NO	<input checked="" type="checkbox"/>
PURCHASE ORDER NO.	[REDACTED]			
DEPT. NO.	[REDACTED]			
FINAL	<input type="checkbox"/>	PARTIAL		<input type="checkbox"/>

Y  
AT

*[Handwritten signature]*

**ARTICLES INSPECTED, ACCEPTED AND RECEIVED**

**LIST OVERAGES, SHORTAGES, DAMAGES AND REJECTIONS. • MUST SHOW DISPOSITION CODE**

**LIST OVERAGES, SHORTAGES, DAMAGES AND REJECTIONS . • MUST SHOW DISPOSITION CODE**

- I CERTIFY THAT THE ARTICLES LISTED ON THIS REPORT WERE INSPECTED AND ACCEPTED BY ME AND THAT THEY CONFORM TO THE CONTRACT REQUIREMENTS; THAT THE ARTICLES SHOWN AS REJECTED WERE REJECTED FOR THE REASONS STATED AND THAT THE FOREGOING IS TRUE.

**MEMORANDUM RECEIPT**

**RECEIVED FROM ORDNANCE DEPT.  
MATERIALS LISTED**

**AS PER YOU. NO**

I CERTIFY THAT THE ARTICLES LISTED ON THIS REPORT WERE RECEIVED BY ME IN THE QUANTITY AND CONDITION STATED, AND THAT THE SAME HAVE BEEN TAKEN UP ON THE STOCK RECORD CARDS OF THIS STATION.

**SIGNATURE OF ACCOUNTABLE OFFICER**

**RANK AND DESIGNATION**

**APPROVED**

**DATE** \_\_\_\_\_ **DEPARTMENT APPROVAL**

DATE PURCHASING DEPT. FOR CODES B-C-J  
MATERIAL RECEIVED BY POSTED TO STORES RECORD

**CLAIM AGAINST CARRIER FOR DAMAGE OR SHORTAGE** G. OVER — TO BE ACCEPTED AND PAID FOR  
SCRAPPED — ~~NOT TO BE PAID FOR~~ H. OVER — TO BE RETURNED TO SELLER  
**REWORK CRITICAL TOOLS & MACH. PARTS ONLY** J. SUBSTITUTION — TO BE ACCEPTED AND PAID FOR  
REJECTED — ~~NOT TO BE PAID FOR~~ K. SUBSTITUTION — NOT ACCEPTABLE — RETURN TO VENDOR

[fol. 1053] Q. I show you these documents which have been marked Plaintiffs' Exhibits M-1, M-2 and M-3. Tell us what they are, will you please, and describe them.

A. M-1 is a copy of a purchase order to Western Cartridge Company, East Alton, Illinois, covering purchase of 44,370 pounds of cartridge brass for caliber 50 cases, in [fol. 1054] the amount of \$2,263,275.

Q. Is that document which you have just explained typical of many other purchase orders which took place between Western Cartridge Company and this United States Cartridge Company during the operation of this plant, covering that material? A. Yes, sir.

Q. And there was during the four years a substantial amount of material purchased in the fashion described in this order? A. Yes, sir.

Q. And it all moved from East Alton, Illinois, to St. Louis, Missouri?

A. Yes, sir, that is from Western Cartridge Company.

Q. And shipments from Western Cartridge Company were from East Alton, Illinois? A. That is right.

Q. All right now. Now, what is two?

A. I have a bill of lading covering a shipment of 432 coils of sheet bronze from the American Brass Company, Waterbury, Connecticut, to the St. Louis Ordnance plant.

Q. That is typical of a shipment of brass purchased by United States Cartridge Company from an industry outside the State of Missouri, is it not? A. Yes, sir.

Q. Other than the Olin interest at East Alton?

A. Yes, sir.

[fol. 1055] Q. And there was a substantial amount of such purchases during the four years? A. Yes, sir.

Q. Now then, what is the other?

A. I have a receiving and inspection report covering the receipt of 82,653 pounds of cartridge brass for 50 calibre case cups received from the Bridgeport Brass Company, Indianapolis, Indiana, at the St. Louis Ordnance plant, and as covered by a Government purchase order on Government free issue.

Q. And that document is typical of shipments of brass which moved from out-state industry into the St. Louis Ordnance Plant on purchases by the United States Army Ordnance, called the Government free issue. Is that right?

A. That is correct.

Q.. And there was a substantial amount of such purchases? A. Yes, sir.

Mr. Bond: I offer these three in evidence relating to the matter of brass.

[fol. 1056] Q. Now then, take up the next item, it is lead. I hand you here one bunch of papers and ask you what they are.

A. I have a copy of a check covering the purchase of 120,973 pounds of lead from the National Lead Company, St. Louis, Missouri, and shipped from Granite City, Illinois, to the St. Louis Ordnance Plant.

Q. And that check and these accompanying papers are typical of purchases of lead by the United States Cartridge Company from National Lead Company for shipment from its Granite City plant into the St. Louis Ordnance Plant? Is that correct? A. Yes, sir.

Q. And there was a substantial movement of that material into the plant during the four years, from this company? A. Yes, sir.

Mr. Bond: Mark paper "Plaintiffs' Exhibit N". (Paper is marked as requested.)

Mr. Bond: I offer that document in evidence, relating to the matter of lead.

[fol. 1063] Mr. Bond: Now then, we have covered what appears lead and powder. It leaves only steel.

Q: I show you these documents and ask you what they are?

A. I have a copy of a check covering purchase of 20 bundles of steel bars in the amount of \$90,048.61 from the Crucible Steel Company of America, and shipped from Pittsburgh, Pennsylvania, to the St. Louis Ordnance Plant.

Mr. Bond: I will ask the reporter to mark that for identification "Plaintiffs' Exhibit P". (The paper is marked as requested)

Q. And that document, Plaintiffs' Exhibit P, is typical of the out-state purchases by the Cartridge Company of steel during the operation of this plant? A. Tool steel.

Q. Tool steel. And there was a substantial amount of such purchases during the four years?

A. That is correct.

Mr. Bond: I offer in evidence "Plaintiffs' Exhibit P".

**Plaintiffs' Exhibit N.**

ALEXAN

7/10/86 3AP6.0

**VOUCHER NO.**  
**A 1038**

THE UNITED STATES CARTRIDGE COMPANY  
© 1948 U.S.C. Inc.

ST. LOUIS, MISSOURI

010360

GATT

TO THE BOATMAN'S NATIONAL BANK

ST. LOUIS

## **SAINT LOUIS, MISSOURI**

**FACEL ★★★★★ 1966-67** **Special Edition**

**THE UNITED STATES CARTRIDGE COMPANY**  
**SPECIAL ADVANCE ACCOUNT CONTRACT W-ORD-491**

**TO THE ORDER OF**

PAY.

WORK AFTER 30 DAYS FROM DATE

**VOUCHER NO.**  
**A 10385**

THE UNITED STATES CARTRIDGE COMPANY, ST. LOUIS, MISSOURI  
THE ATTACHED CHECK IS IN FULL PAYMENT OF THE ACCOUNT STATED BELOW

## DISTRIBUTION

ACCOUNT	AMOUNT	ACCOUNT	AMOUNT	PROOF READ BY
511-000	201.17			
571-00	722.17			
				CALCULATIONS CHECKED BY
				ACCOUNT DISTRIBUTION MADE BY
				APPROVED BY
				APPROVED BY

FORM 6A-1B

---

DEPART

FILE COPY

**STOREKEEPER**      **STORES REC'D BY CLERK**

SUPPLEMENTAL CODE - USE THIS CODE AS THE ONLY ONE

- A CLAIM AGAINST CARRIER FOR DAMAGE OR SHORTAGE**  
**B SCRAPPED — NOT TO BE PAID FOR**  
**C REWORK AT OUR EXPENSE**  
**D REWORK AT SELLER'S EXPENSE**

- F** RETURN TO SELLER FOR CREDIT  
**G** OVER — TO BE ACCEPTED AND PAID FOR  
**H** OVER — TO BE RETURNED TO SELLER  
**J** SUBSTITUTION — TO BE ACCEPTED AND PAID FOR

[fol. 1058] Q. Now then, powder. Explain these documents which I offer to you.

A. I have a copy of a check covering the purchase of 2,200 pounds of PETN special explosive received from the Trojan Powder Company, Allentown, Pennsylvania, shipped from Seiple, Pennsylvania, into Missouri.

Q. A branch of that plant?

A. That is correct. I also have a copy of check covering the purchase of 2,600 pounds of PETN Class B explosive, shipped from the Trojan Powder Company, Allentown, Pennsylvania, from the Seiple, Pennsylvania, shipping point to the Tyson Valley Park Powder Farm, Missouri.

Q. That Tyson Valley Park Powder Farm is a department of the United States Cartridge Company?

A. It is a part of it.

Q. Part of the plant where they stored that powder?

A. That is correct. I have a receiving and inspection report covering receipt of 60,131 pounds of smokeless powder from the Badger Ordnance Works, Baraboo, Wisconsin. And it represents Government purchase and issued on Government free issue.

Mr. Bond: Now then, I will ask these be marked "Plaintiffs' Exhibits O-1, O-2, O-3." (Papers are marked as requested)

Q. I call your attention to the two documents which have been marked "Plaintiffs' Exhibits O-1 and O-2" and [fol. 1059] ask you if it isn't correct that they are typical or illustrative—if they are typical documents illustrative of the out-state purchases of powder by United States Cartridge Company and the shipment thereof into the plant in Missouri? A. That is correct.

Q. And I show you Plaintiffs' Exhibit No. 3 and ask you if that is typical of an out-state purchase of powder by the United States Army Ordnance on what is called Government free issue for shipment from Baraboo, Wisconsin, to the plant in Missouri? A. Yes, sir.

Q. And if all the records were produced they would show a substantial movement of both kinds of purchases during the four years? A. That is correct.

Mr. Bond: I offer these in evidence.

**Plaintiffs' Exhibit P.**

**THE UNITED STATES CARTRIDGE COMPANY**  
**ST. LOUIS, MISSOURI.**

**ST. LOUIS, MISSOURI**

**TO THE BOATMAN'S NATIONAL BANK**

4-3

## **SAINT LOUIS, MISSOURI.**

7/16/46 40

NO. 2-31462

PAY \_\_\_\_\_ DOLLARS \$   ,  .

## **TO THE ORDER OF**

**CORPORATION OF AMERICA  
405 MADISON AVENUE  
NEW YORK**

**THE UNITED STATES CARTRIDGE COMPANY**  
SPECIAL ADVANCE ACCOUNT CONTRACT W-ORD. 481

**(X) OR AFTER 90 DAYS FROM DATE)**

SECRETARY

**ASST. TREASURER**

**VOUCHER NO. 2-31462**

**THE UNITED STATES CARTRIDGE COMPANY ST. LOUIS, MISSOURI**  
**THE ATTACHED CHECK IS IN FULL PAYMENT OF THE ACCOUNT STATED BELOW**

## DISTRIBUTION

ACCOUNT	AMOUNT	ACCOUNT	AMOUNT	PROOF READ BY
				J. M. H.
				CALCULATIONS CHECKED BY
				ACCOUNT DISTRIBUTION MADE BY
				APPROVED BY
				J. M. H.
				APPROVED BY
				J. M. H.

FORM CA-3B REV. 3-42

**SIGN CERTIFICATE ONLY ON THE FIRST COPY.**

SEND THE FIRST SIX (6) COPIES TO

**THE UNITED STATES CARTRIDGE COMPANY**

N. L. McJunkin

Campbell

**TITLE**

FORM CA-41

Note

Blank Pages at this Point

**LIBRARY  
SUPREME COURT, U.S.**

**Vol. II**  
**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1949**

**No. 96**

---

**R. M. POWELL, ET AL., PETITIONERS,**

**vs.**

**THE UNITED STATES CARTRIDGE COMPANY**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED JUNE 3, 1949.**

**CERTIORARI GRANTED OCTOBER 10, 1949.**

# **RECORD.**

**Vol. II.**

---

## **United States Circuit Court of Appeals, EIGHTH CIRCUIT.**

---

**No. 13,663.  
CIVIL.**

---

**THE UNITED STATES CARTRIDGE COMPANY,  
A CORPORATION,  
APPELLANT,**

**vs.**

**R. M. POWELL ET AL.,  
APPELLEES.**

---

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF MISSOURI.**

United States Circuit Court of Appeals,  
EIGHTH CIRCUIT.

---

No. 13,683.  
CIVIL.

---

THE UNITED STATES CARTRIDGE COMPANY,  
A CORPORATION,  
APPELLANT,

vs.

R. M. POWELL ET AL.,  
APPELLEES.

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF MISSOURI.

---

FILED NOVEMBER 19, 1947.

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[fol. 1065] Mr. Bond: Now then, let the record show that Plaintiff's Exhibits M-1, M-2 and M-3, N, O-1, O-2 and O-3, and P, are given to Mr. McRoberts who undertakes to have them photostated and photostatic copies supplied to the reporter and Counsel and may be used in lieu of the originals for all purposes of this case.

Mr. McRoberts: Will you substitute Mr. Schultz's name for Mr. McRoberts?

Mr. Bond: All right, substitute Mr. Schultz's name.

The Witness: I will take care of that.

Mr. Bond: That is all.

Cross Examination by Mr. McRoberts:

Q. Mr. Schultz, referring to Plaintiffs' Exhibit M-1, being the purchase order for brass addressed to Western Cartridge Company, I see down in the bottom right-hand corner a signature in the space which bears the legend "Contracting Officer's Representative." Whose signature is that? Not the individual but what is his capacity?

A. His capacity is representing the Commanding Officer of the St. Louis Ordnance Plant.

Q. And did the representative of the Commanding Officer at the St. Louis Ordnance Plant approve in writing every purchase order, not only for brass but for everything else that was purchased during the operation of that plant? A. Yes, sir.

Q. And that approval was obtained before the purchase [fol. 1066] order was issued? A. Yes, sir.

Q. That was the restriction or limitation under which you operate? Is that correct? A. Yes, sir.

Q. If you wanted to be reimbursed for this purchase you had to get the approval—

Mr. Bond: Object to that as not being germane to my examination. This is an adverse witness I put on for cross examination as to certain files. Now he is going into the matter of what has to be done to get reimbursement.

The Court: Objection sustained.

Q. Now Mr. Schultz, referring to Plaintiffs' Exhibit P, that is a copy of a check which was used to pay for one of these purchases, is that correct? A. That is correct.

Q. On direct examination you started to say something about the funds which were used to pay for these purchases.

Mr. Bond: Object to any testimony from this witness in reference to funds that are not shown on the face of these papers for the reason it is not germane to my direct examination.

Mr. McRoberts: You had no direct examination.

Mr. Bond: No, sir. I brought out the check and what was shown on the face of the check. I didn't inquire into [fol. 1067] where the funds came from, I didn't ask him anything about it at all.

The Court: He may answer.

Mr. Bond: We except.

A. The funds covering the issuance of this check were obtained from the United States Government to be used solely for the purpose of paying for purchases made under our contract.

Q. In what account were those funds deposited?

A. In the special advance account, Contract WD 491.

Q. And that is the account referred to on the face of the check? A. That is correct.

Q. Was that an account which you use or could use for the general business of the United States Cartridge Company? A. No, sir.

Mr. McRoberts: I am not going to ask the witness to testify as to the limitations that are set forth in the contract which will be introduced in evidence later on, Your Honor please.

Q. Those were the Government funds that were used to pay for those purchases? A. Yes, sir.

Mr. Bond: Object to that as calling for a conclusion of the witness. The witness has stated the facts.

A. I think that is an ultimate fact.

The Court: He may answer if he knows.

A. Yes, sir.

[fol. 1068] Mr. Bond: I want to make the further record, according to the testimony of this very witness on his own version those funds were advanced by the Government to the United States Cartridge Company, deposited by the United States Cartridge Company in their name under a special account, and checked out by the United States Cartridge Company on its checks drawn on that account. Therefore, I say that it would be correct to say that, its funds or Government funds, the title and control of these funds were in the defendant.

Q. (Mr. McRoberts) Now, is that true with respect to the payment that was made in each of the purchase orders, not only the ones which were introduced in evidence but all of the other purchase orders used at that plant of which you have testified the ones offered in evidence are typical?

A. That is correct, with the exception of the Government free issue.

Q. But where you paid for the purchases you paid for them with funds out of those of a similar special account and funds of the character which you have described?

A. Yes, sir.

Q. Now, if you know, who held title to the property so purchased?

Mr. Bond: Object to that, if the Court please, as not being germane to [anyting] I touched on in direct examination. And further, as being utterly irrelevant and immaterial to the case. It is certainly not germane to these records.

[fol. 1069] Mr. McRoberts: That may be true, Your Honor.

Q. I note, Mr. Schultz, on some of these papers, I am not sure whether it is on copies introduced in evidence, a rubber stamp which reads Ralph Charles, Captain Ordnance Department, accountable officer, being in this particular case K. M. Henry, Assistant. What does that rubber stamp indicate?

A. That the material covered by this receiving report is accountable by Ralph Charles, Captain of Ordnance Department, Accountable Office, United States Government.

Q. He is an officer of the United States Government?

A. Yes, sir.

Q. Did the United States Government or the Ordnance Department check into the plant the purchases covered by these various purchase orders and documents which you have identified and which have been offered in evidence?

Mr. Bond: Objected to as not germane to the direct examination and irrelevant and immaterial.

(Last preceding question read.)

Mr. McRoberts: I might point out that the occasion for the question is the appearance on these documents of the stamp of a Government property accountable officer.

Mr. Bond: I asked the witness only as custodian of the records to bring them here and explain their nature.

The Court: Objection sustained.

Mr. McRoberts: One final question.

[fol. 1070] Q. Mr. Schultz, there was some reference to powder here. Was all of the powder, as such, smokeless powder furnished by the Government? A. Yes, sir.

Q. But where the term has been used with respect to powder, in speaking of purchases from other persons you really mean explosives used for priming?

A. That is correct.

Q. And not smokeless powder? A. That is correct.

Q. The powder itself was all furnished by the Government? A. That is correct.

Mr. McRoberts: I think that is all, Your Honor.

Mr. Bond: I would like to call Mr. Russell Casteel, an officer of the defendant corporation, for cross examination on just one subject.

RUSSELL RONAINE CASTEEL,  
of lawful age, produced, sworn and examined, testified on behalf of plaintiffs as follows:

Direct Examination by Mr. Bond:

Q. Mr. Casteel, will you state your full name?

A. Russell Ronaine Casteel.

Q. Where do you live? A. Alton, Illinois.

[fol. 1071] Q. You are an officer of the defendant corporation? A. Yes, sir, Secretary.

Q. Secretary of the defendant corporation? A. Yes, sir.

Q. I will ask you if you know the correct corporate name of the defendant? A. I do.

Q. What is it?

A. The United States Cartridge Company.

Q. "The" is part of the title? A. Yes, sir.

Mr. Bond: That is all. Thank you.

Mr. McRoberts: I can't cross examine on that. You will be excused.

Mr. Bond: I noted that, Your Honor, from the fact that all the papers filed by Mr. McRoberts had the word "the" in it. My information which I got from the Secretary of State's office didn't have the word "the" in the title. In conformity with this proof I ask leave to amend.

The Court: The word "the" isn't as important as it was.

Mr. Bond: Yes, sir, I was thinking of that in view of the recent depositions. I will ask leave, if the Court please, to amend the first amended petition by interlineation by writing in the word "the" in front of the corporate title of the defendant. I will give the Clerk a minute and ask [fol. 1072] him to so amend my first amended complaint.

Mr. Bond: I desire, if the Court please, to offer in evidence from the files in this case—they may be matters of record but, anyhow, I formally offer them.

Mr. McRoberts: Before you actually close your case, I would like to recall Mr. Harris for a question.

Mr. Bond: I would like to introduce in evidence the following from the answers served upon me by defendant April 19, 1946, to the amended and additional interrogatories which I had served upon them shortly prior thereto. The exact date will appear from the record copy. The answers are as follows:

"Answer to Interrogatory No. 1. Defendant is incorporated under the laws of the State of Maryland. Was licensed to do business in Missouri September 11, 1941.

"Answer to Interrogatory No. 2. Defendant operated a manufacturing plant in St. Louis for the manufacture of ammunition."

I will say that I am only offering such parts of the answers as I use as an admission.

Mr. McRoberts: He is offering part of the sentence. I object to that.

Mr. Bond: Well, I offer so much of it as I desire to use as admission. Now there are [interpolated] a great many things which I didn't ask for and which I don't care for. You can't by adding right or irresponsible matter bind or [fol. 1073] keep me from using the part which is admission. I am offering only the part that I want to use as an admission. The question I asked him was, "Did the defendant operate a manufacturing plant in St. Louis for the manufacture of ammunition?" And of his answer I offer the following: "Defendant operated a manufacturing plant in St. Louis for the manufacture of ammunition." Now the part that I do not offer is, "Under the terms and provisions of a certain contract between the defendant and the United States of America, dated December 5, 1940, and identified as Contract No. W Ordnance 491, and various supplements thereto over a period beginning in the month of December, 1941, and ending August 31, 1945." I did not ask him about that contract. I know nothing about it. I do not care to offer his statement thereon as part of my case. But the fact being [interpolated] that; I do not think deprives me of the right to use such parts of the answer as is an admission.

Mr. McRoberts: We admit the whole admission as made and not a part of it, when we make an admission.

(Discussion at Court's Bench between Court and Counsel.)

The Court: I will permit you to read the portion of the answer in this particular case, but not to be a precedent.

Mr. Bond: Interrogatory No. 3, I asked him. "Describe the product produced at the plant." That is all I asked him, "what did you produce." Now I read this much of his answer. "Thirty, fifty and sixty calibre ball tracer and armor-piercing small arms ammunition." Now he [interpolated] some other matter.

[fol. 1074] The Court: Let me see it.

Mr. Bond: He [interpolated] what follows.

The Court: All right, you may offer the part you have there.

Mr. McRoberts: The point I am trying to make clear is, in both of these answers we are not producing material, we are not operating a plant in the ordinary commercial sense, nor are we producing materials and products in the ordinary sense. We are actually operating on war processing goods owned by the United States of America. The raw materials of this plant, the machinery, equipment and raw materials from the very beginning clear on, through until it was a finished product were owned by the United States. In that sense we did not produce the ammunition, we were processing materials owned by the Government. And that is what I am trying in my answer to clarify.

The Court: You asked him to describe the product produced at the plant.

Mr. Bond: That is right, I didn't ask him to say he produced, I asked him what was produced at the plant.

The Court: It seems the part the Judge wants to offer is all—

Mr. Bond: All I want to offer is what was produced out there. I didn't ask him who produced it. Read my question, "Describe the product."

The Court: Read just the amount you have there.

Mr. Bond: Interrogatory No. 5, I asked him "For what [fol. 1075] [pur] purpose."

The Court: If he was a witness on the stand and volunteered the answer, the Court would strike the irresponsible part.

Mr. Bond: I asked him this question: "What raw materials were used by the defendant in the manufacture of this product?" Now then, I read this much from the answer: "Brass, powder, lead, steel and various other raw materials," and that is all I want. That answers my question. In addition he comes in—

The Court: All right, let me see it.

Mr. Bond: All right, so the rest about the title to that and all about it.

Mr. McRoberts: Note that he asks what was used by the defendant.

Mr. Bond: I asked you what raw materials were used at this plant. That is what I asked you.

Mr. McRoberts: No, sir, the question is here, "What raw materials were used by defendant in the manufacture of its product?" Used by our employees, it was our material.

The Court: You may offer just the amount that you have offered, Judge.

Mr. Bond: Interrogatories No. 6 and No. 7, I am going to read all of those:

"No. 6. Where and from whom were those raw materials obtained?" "From various places both in the State of Missouri and in other states of the United States and from the United States Government and [fol. 1076] more than two thousand other vendors."

"No. 7. What method of transportation or common carrier was used to deliver raw materials to defendant's plant?" "Railroads, trucks, automobiles and airplanes."

"No. 8. What facilities did the defendant maintain on its premises for the receipt of materials and the shipments of its products?"

Now then, I am going to read this much of the answer, starting at the beginning of the second sentence:

"On the said premises belonging to the United States of America and constituting part of said plant, there were various facilities for the receipt of material including (1) bulk receiving dock and approximately thirteen individual receiving stations. On the said premises there were various facilities for the shipment of the products produced at this plant, including approximately thirteen shipping docks located at the separate production units and storage warehouse. The said facilities were maintained by employees of defendant."

He put in something about the contract, that they were pursuant to some contract with the government. I don't

want to bring that in my case at all. I do not think it is binding on us. My clients didn't sign as a party to this contract.

Mr. McRoberts: The question is, "What facilities did the defendant maintain on its premises for the receiving of [fol. 1077] material and shipment of its product?"

The Court: That is Question No. 8?

Mr. McRoberts: Question No. 8.

Mr. Bond: I didn't say "own," Your Honor; "maintain".

Mr. McRoberts: In answer to that we make it clear that we had no premises.

Mr. Bond: I didn't say you had. I asked you what facilities you maintained on those premises. I didn't say you owned them. I proved the employees maintained those facilities and operated those switch engines.

The Court: You want to leave out the first of the answer?

Mr. McRoberts: He leaves out the first sentence and the last seven words of the last sentence.

Mr. Bond: That is right, I don't know anything about it and don't want to put it in as part of my case, but I want the admission that their men maintained those facilities.

The Court: The testimony in this case, Judge Bond—

Mr. Bond: May I offer the whole answer with the qualification that I am offering it only for the purpose of admission that they maintained the facilities?

Mr. McRoberts: I think if it is offered he has to take it or leave it with all responsibilities that go with it.

The Court: He may offer it.

Mr. Bond: I will offer the entire answer only for the purpose of admission that the defendant maintained those facilities.

[fol. 1078] Mr. Bond: Now then, No. 9.

Mr. McRoberts: Don't you think the whole answer should be read into the record? Only a part has been read.

Mr. Bond: The whole answer I am offering only that part heretofore read, with the following preliminary sentence:

The Court: Read the whole thing throughout.

Mr. Bond: "Defendant had no premises. The entire manufacturing plant included land, buildings, machinery at all times belonging to and being in the possession of the United States of America and constituting a military reservation. On the said premises belonging to the United States of America and constituting part of said plant there are various facilities for the receipt of material, including one, bulk receiving dock and approximately thirteen individual receiving stations. On the said premises there were various facilities for shipment of the products produced at said plant, including approximately thirteen shipping docks located at the separate production units and storage warehouses. The said facilities were maintained by employees of the defendant."

And then the answer concludes, being the part I didn't read,

"Pursuant to the terms of said contract."

Mr. Bond: I want to read this whole answer except for the last part, "pursuant to the terms of the contract." [fol. 1079] And if Your Honor wants it read, I will.

Mr. Bond: "Describe the switching facilities in use"—that is nine—"particularly, where were the tracks located, who maintained them, whose crews operated them, with what railroads did they connect, and at what points did they so connect?"

Mr. McRoberts: The answer should be read.

Mr. Bond: I want to read the whole answer except the last seven words, "pursuant to said terms of the contract," and if Your Honor wants me to read the whole answer I will do it on the understanding I am only offering it for the admissions.

"Switching facilities in use at the said manufacturing plant consist of four switch engines and various railroad tracks, all of which were at all times owned by the United States of America. The tracks were adjacent to all large

production and storage warehouse units and connected with the lines of the Terminal Railroad Association at the West Belt Yards of said administration. The tracks were maintained by employees of the defendant, and the crews who operated said switch engines were also employees of the defendant."

Then he adds the part: "Pursuant to the terms of said contract," which I didn't ask for and I contend is irresponsible and do not intend to be bound by it:

Mr. Bond: Interrogatory No. 10. I want to read all the answer to that for the admissions contained in said answer, except one sentence which occurs about the middle and [fol. 1080] which reads as follows: "And maintained by the defendant under the terms of the contract," and I don't offer as part of my case. I offer the answer only for the admission. He admits they maintained them, but he adds "the maintenance was under the terms of the contract," which I don't want.

The Court: I think you ought to read it all.

Mr. Bond: I want to offer in evidence that answer in Interrogatory No. 11. I ask leave to read from so much of that answer as admits that the employees of defendant unloaded incoming freight and loaded outgoing freight.

The Court: That is—

Mr. Bond: "Employees of defendant unloaded incoming freight and loaded outgoing freight."

Mr. McRoberts: He left out "they did that under the direct supervision, directions and instructions of agents of the United States of America."

Mr. Bond: Yes, sir, but I didn't ask for that and I don't want to be bound by it.

Mr. McRoberts: I think the answer is misleading. We did have our employees that did that hand hooking independently.

The Court: I think he should read that.

Mr. Bond: Then I withdraw the answer.

Mr. Bond: No. 15, answer to "who did the actual loading of outbound shipments?" I will read that answer as they give it: "Employees of defendant acting under the supervision, direction and instructions of employees or agents of the United States of America," excepting the portion of [fol. 1081] "pursuant to the terms of said contract." I don't read that part.

Mr. McRoberts: Then I object to it, Your Honor please.

Mr. Bond: In fact, I will withdraw it. I won't offer that answer at all as part of mine.

Mr. Bond: No. 16. I will read the whole answer. I withdraw the 15, I think it is in conflict with the evidence. I have proved, as I understand my proof, that the Cartridge Company employees loaded these outgoing shipments and they were not under any supervision of anybody. And I don't propose to admit that answer.

Mr. McRoberts: I don't think we will have any dispute about the admission of part of the answer to Item 16. The answer is, Yes.

The Court: Well, it is the usual time for recess now. Announce a recess until two o'clock.

Therupon, at 12:30 P. M., July 10, 1946, a recess was taken until 2:00 P. M. The proceedings were then resumed as follows:

The Court: Proceed.

Mr. Bond: I believe I was reading in evidence admissions from some of the answers made to my amended interrogatories. I desire to read Interrogatory No. 25:

"Do the columns headed 'total' show all the time that appears on the time-cards?" The answer is—

Mr. McRoberts: Your Honor, that is the one in which we filed a proposed amendment.

Mr. Bond: There has been no evidence that the first [fol. 1082] answer is incorrect, and proof in my case shows it was correct. All my witnesses testified they were ordered to report thirty half hour ahead of time.

Mr. McRoberts: That is the interrogatory to which we have filed a proposed amended answer, Your Honor, and we think the true facts should be brought out rather than the erroneous statement here.

Mr. Bond: They will shortly have a chance to put on evidence, Your Honor.

The Court: Let me read the answer.

(A paper is passed to the Court.)

Mr. Bond: I added such a half hour in a separate column in my computations on the face of this admission; there is the answer, 25.

The Court: Objection is overruled.

Mr. Bond: The interrogatory is, "Do the columns headed 'total actual hours' show all the time that appears on the time-cards?" And the answer is, "The information in the columns headed 'total actual hours' on the computations heretofore delivered to plaintiffs' attorney does not show the time elapsed between the punching of the time-card and the beginning of the shift. Otherwise, it shows all the time that appears on the time-card."

Mr. Bond: Now, Your Honor, there are on file two requests for admissions under Rule 36; one served on the [fol. 1083] defendant the 24th day of April, 1946, and I offered that in evidence, and the responses thereto served on me. The date of service does not appear, but it was filed in court and the Clerk's minutes will show. The responses speak for themselves as to the second admission. There is one point I want to make for the record on their responses to the first request for an admission. And in this paper I asked them to admit, in Item 1 of my request, that the bills of lading, in effect, where the bills of lading covered outbound shipments, contained recitals and statements showing that at least the greater part of the ammunition produced thereat at the manufacturing plant at 4300 Goodfellow Avenue, while same was being operated by defendant, and during the time the plaintiffs were employed therein, was billed and shipped out of such plant by railroad or other form of transportation to destinations

outside the State of Missouri. And the response is that they could neither admit nor deny that request. I wish to make the complaint that the response is insufficient for the reason it is not sworn to by the corporation or by any officer thereof, nor in fact by any individual, of his own knowledge, as the rule requires, nor by an attorney for the defendant on information and belief. Now the rule requires a certain statement by the party, or else the matter is admitted. And I contend that means a particular statement under oath by the responsible party that the fact did not exist; not on information or belief by an attorney. If [fol. 1084] that were so, all a client would have to do would be to tell his lawyer in conference that it was not so. The lawyer could deny on information and belief, and you would have a direct denial. Therefore, I say the denial is insufficient.

Mr. McRoberts: The answer which we made is that these records are in the possession of the Government and not our records. And that is what the testimony shows, as Judge Bond has just brought out; the very records about which he has spoken were produced in court by an employee of the Government.

Mr. Bond: I say in response that such an affidavit is an insufficient response and that the request under the rule stands admitted on the record, because the rules say that if you neither admit nor deny it must be accompanied by a certain sort of affidavit, which this is not. I think, Your Honor, that while it may be they do not know where this ammunition went, there was not anybody out there in that plant that wanted to say that he didn't know it went out of the State of Missouri.

Mr. McRoberts: There are no disputed facts. The ultimate fact called for by the admission has been proved by the records themselves. They were not our records, but the case records.

Mr. Bond: I make the point that it is also admitted.

The Court: What are you asking at this time, Judge?

Mr. Bond: I am offering in evidence at this time and make the point in the record that on the face of the re-

sponses the admissions as requested stand admitted. And [fol. 1085] I suppose that will be taken for consideration along with the case. I have proved it by other proof.

And the additional request, No. 36, I offered in evidence, but Counsel admitted the genuineness requested therein, and they have done so by making no response whatever.

Mr. Bond: That, Your Honor, is the plaintiffs' case.

Mr. McRoberts: I wish to recall Mr. Harris for a couple of questions before the case is closed.

The Court: Yes, sir, you called attention to that before.

Mr. Bond: That is perfectly all right. I can't make any objection to that.

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FRANK N. HARRIS

previously sworn, recalled for further cross examination, testified as follows:

Recross Examination by Mr. McRoberts:

Q. I believe you testified when you were first employed as a safety engineer, you were instructed that you would report half an hour before the shift of the production employees and work to the end of that shift?

A. That is correct.

Q. And those instructions were later changed; were they not, so that you were not required to report a half an hour ahead of the production employees' shift but merely to [fol. 1086] report at the same time that the production employees reported?

A. When you say "later," what do you mean by that?

Q. Well, some months after your original employment.

A. Six months?

Q. Some months. I will produce evidence as to the exact date.

Mr. Bond: We have in our computation, it was sometime in October, 1943, I think our evidence shows.

The Court: October 25, 1943, wasn't it?

Mr. McRoberts: October.

Mr. Bond: It was some date in October, 1943, that ceased to be in effect.

The Witness: May I elaborate on that?

The Court: Yes, sir.

A. I believe to the best of my recollection it was at the time—the day after I believe in the mass meeting, and that came about as a result of dissatisfaction of the employees in our department, at which time I brought up the question of determining our status. And at that time I brought it up with the Director who was present in that meeting which was attended by all members of the department. It was the following day, if I remember correctly, after a bulletin was placed on the bulletin-board to the effect that the original requirement by the company that we report one-half hour before the regular production shift was then cancelled and, therefore we would not be required to report until on the day shift, for example, at eight [fol. 1087] o'clock, or on the 4 to 12 shift, four o'clock and midnight shift, 12 o'clock. Then that bulletin wasn't up a whole day, not one whole day did they leave that bulletin up when they replaced it with another bulletin cancelling that one and telling us that order was in effect and we must report one-half hour before the regular production shift; or, in other words, 7:30 on the day shift, 3:30 on the afternoon shift, and 11:30 on the night shift. And that remained in effect until as far as I was concerned and the majority of the department was concerned, who were sometime about October, 1943, transferred to production, after which we were not required to come in thirty minutes before.

Mr. Bond: It was in effect from the beginning of the plant until this day in October where we have terminated noting that half hour on our computations?

The Witness: It was with the exception of the one day I mentioned.

Note

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[fol. 1140] Q. (Mr. McRoberts) Mr. Harris, at the request of Judge Bond, we have produced in court time-cards of the plaintiffs named in this case for a designated week in February of 1943 and for a designated week in November of 1943.

Mr. Bond: Three days only, wasn't it? A designated three days in February and November?

Mr. McRoberts: Time-cards are on a weekly basis including those three days.

[fol. 1141] Q. (Mr. McRoberts): And I will show you a paper which has been identified as "Defendant's Exhibit 9" and ask you if that is your time-card for the pay period ending 11/14/43?

A. It appears to be my time-card, but as to its being 1943, I couldn't tell.

Q. Look in the upper right-hand corner and see the date.

A. I can't tell whether that is a five or three. Can you?

Q. Will it help you to look at these other three where the top is cut off? Does that help you to fix that number?

Mr. Bond: It can't be 1945, the plant wasn't operating; so that may help you.

A. I would say that it is possible and probable.

Q. That is your time card? Does that correctly indicate the times when you punched in and punched out during that week?

Mr. Bond: Your Honor, of course the time-card is a document kept by the defendant in its file. We assume what they produce are our time-cards, but you can't prove by this witness that is his time-card; he doesn't know.

Mr. McRoberts: He punched it.

Mr. Bond: Oh, did he? Well, I am not familiar with the mechanics of it. I think it was a document that never came in the hands of the employee.

(Last preceding question was read.)

The Court: Well, Mr. McRoberts, I don't think after that long time--

[fol. 1142] Mr. McRoberts: I will withdraw the question.

Mr. Bond: I think they ought to prove that is his time-card.

Mr. McRoberts: I think that is all.

Mr. Bond: That is all, Mr. Harris.

The Court: Is that Plaintiffs' case?

Mr. Bond: That is the Plaintiffs' case, Your Honor.

Mr. McRoberts: Your Honor please, I am not sure what your practice is under the new rules. If the Court please, at the close of Plaintiffs' case defendant moves to dismiss the complaint for the reason Plaintiffs' evidence fails to show sufficient grounds for the granting of the relief prayed, or for any relief.

Mr. Bond: I take it the matter is not to be argued.

Mr. Bond: Your Honor ruled on it.

Thereupon, defendant to sustain the issues in its behalf, offered and presented the following evidence:

HARRY P. MILLER,

of lawful age, produced, sworn and examined, testified on behalf of defendant as follows:

Direct Examination by Mr. McRoberts:

Q. Will you state your name, please, Harry?

A. Harry P. Miller.

Q. Where do you live?

[fol. 1143] A. 3530a Connecticut, St. Louis.

Q. Where are you employed?

A. At the St. Louis Administration center, formerly St. Louis Ordnance Plant.

Q. And by whom are you employed?

A. United States Cartridge Company.

Q. How long have you been connected with that company? A. Since February 1, 1942.

Q. And in what capacity are you presently employed?

A. Personnel Director.

Q. And how long have you held that position?

A. Since July 17, 1944.

Q. And before that, what position did you hold?

A. Assistant Director Industrial Relations.

Q. And how long did you hold that position?

A. From July 1, 1943, to July 17, 1944.

Q. And before that what was your position?

A. Personnel supervisor.

Q. How long did you have that position?

A. From February 1, 1942, to July 1, 1943.

Q. And that was when you went to work for the company, was it, February 1st? A. Yes, sir.

Q. Mr. Miller, under those various positions, what connection have you had with the safety department of the company?

[fol. 1144] A. I have been in the first two positions, assistant to the personnel director who was in charge of the Personnel Division. As such I had the director of safety and his assistants reporting directly to me since February 1, 1942.

Q. And then in your other positions what were your duties with respect to the safety department?

A. The duties were the same.

Q. So that [from] February, 1942, up to [day], or up until the end of the operation of the plant, the safety department functioned under your general supervision and direction? A. That is true, yes, sir.

Q. It functioned through the chief safety engineer who was directly in charge of the department.

Mr. Bond: I would rather you would tell about how the department functioned.

Mr. McRoberts: The point is well taken.

Note

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[fol. 1146] Q. (Mr. McRoberts) I show you a paper which has been identified as Defendant's Exhibit 10 and ask you what that is?

A. That is an organization chart showing the safety department and the various subsections of the safety department.

Q. And disregarding the names and dates shown on there, does that organization chart show the organization of the safety department during substantially the entire [fol. 1147] period of operation of the plant?

A. Yes, sir, it does.

Q. Now, using that to guide you or refresh your recollection, will you describe the organization of the safety department?

A. The safety department was originally organized and set up as one of the six departments within the Personnel Division. The safety department was set up as a staff advisory organization reporting to the assistant director of personnel, and through him to the director. The department functioned through a chief safety engineer who was in charge of the department, and he had at various times from one to three assistants. Under his direct supervision were various sub-departments: the Fire-Department, Sanitation and Public Health, Scrap Burning Grounds for the disposal of all explosive scrap, Educational Statistics, records and safety stores, laundry, placement of handicapped or disabled employees, research and specifications, electrical, mechanical and [structural] subdivision, and explosives, handling and manufacture. Those were the various subheads that functioned directly under the chief safety engineer. All of those sub-departments were set up and established on a staff [supervisory] basis with the exception of two. Those two were the fire department and the burning grounds for the disposal and burning of explosive scrap.

Q. Proceed, Mr. Miller, to describe the engineers or inspectors who operated under and in these various divisions.

A. The fire department was under the direct supervision of a fire chief; sanitation and public health was under the direction of a supervising staff safety engineer with a number of safety engineers working under him on a three-shift basis.

Q. Stop right there. The safety engineers operating under him, those were the kind of safety engineers that we have been talking about in the evidence in this case? Is that right?

A. That is right, yes, sir. The powder disposal unit was in direct charge of a staff safety engineer; the education, statistic records and safety stores were under the direction of a staff safety engineer, and he had other safety engineers under his supervision. The laundry was under the direction of a staff safety engineer.

Q. And no safety engineers under his supervision?

A. No, sir. The Placement Section for the placing of handicapped or disabled employees was under the direct supervision of a staff safety engineer, and he had other safety engineers working under his supervision. The research and specifications was directly under the supervision of a staff safety engineer, and he had other safety engineers working under his supervision. The electrical, mechanical and structural subsection was under the direction of a staff safety engineer, the safety engineers operating three shifts under his supervision. The explosive, handling and manufacturing was likewise under the direction [fol. T449] of a staff safety engineer with other safety engineers working three shifts under his supervision.

Q. Is it correct that the bulk of the safety engineers was employed in these last two groups? A. That is right.

Q. The majority? A. Yes, sir.

Q. You made the statement that the safety engineering department was set up and operated as a staff advisory organization, with two exceptions: the fire chief and the burning grounds? A. Yes, sir.

Q. Now, what do you mean by that term "staff advisory"? And the other words, the corresponding term for a line operation? A. Line organization, yes, sir.

Q. And in a manufacturing plant you distinguish between a staff function and a line function?

A. You distinguish in this way—

Q. I was going to ask you. Will you please explain what the distinction is?

A. A line function is a function whereby that department actually operates or does the work. For instance, the fire department was not in any sense advisory. It was their job to fight fires and prevent fires, and they worked

[fol. 1150] at it. That was a line job or function. The same thing is true of the scrap at the burning grounds where actual disposal was made of all this explosive scrap. Burning of scrap powder and other explosives was an actual operating function that was carried on there. And so they are set up as a line function. All of the other functions and other subsections of the safety department were considered staff advisory, the reason being that from the beginning we looked to the supervision in the operating units to be responsible for the conditions and for the manufacture of ammunition, and for the protection of their employees. They were responsible for the carrying out of safety in their departments, and the other departments of the safety organization here were advisory to them.

Q. And that is why the rule was established? And I take it from the testimony following that in cases where the safety engineers observed the dangerous conditions or hazardous operations, or anything of that sort, instead of taking it up direct with the employee they took it up with the employee's supervisor in the production branch? Is that correct?

Mr. Bond: That assumes a reason for a thing that the witness hasn't testified about.

The Court: Objection sustained.

Q. What is the reason that the safety engineers were instructed to take up matters of hazardous conditions and unsafe operations and infractions of the safety practices [fol. 1151] with the supervision instead of with the employees themselves?

Mr. Bond: I think the reason is immaterial, the question is what was done out there, what duties were assigned to them and what the character was. The reason that the management might have had in doing that has no bearing on their right to pay overtime.

Mr. McRoberts: The theory of the question is the reasons for requiring the operation to be done in a certain manner, also to indicate the nature and character.

The Court: Objection overruled.

A. The reason was as I just stated, that from the beginning the entire organization was set up so that the supervision in the various departments had full and direct control over all of the conditions in the department. They had direct control of all the employees, the machinery, working conditions, raw material, and so forth, and the direct supervisor of the department was held responsible for safety, for operating safety, and for the safety of its employees. That is the reason that these safety engineers were instructed not to take up any infraction or violation of hazardous practices direct with the employee. It was felt that that would be going over the supervisor's head and would result really with his losing control both of the employees and of the conditions within his department.

Q. Mr. Miller, were the duties and functions of the safety [fol. 1152] department ever reduced to writing?

A. Yes, sir, they were.

Q. Is that true of every department in the plant?

A. Yes, sir, it is.

Q. What do you call those particular documents and papers?

A. Well, in the safety department they wrote up a booklet covering the general duties and functions of the safety engineer. They also wrote up a booklet of what was required from the line supervisory staff in maintaining safety in their department.

Q. May I stop for a moment there, Mr. Miller? Is the first of those booklets, the one which has been identified by Judge Bond here as Plaintiffs' Exhibit F, entitled General Instructions? A. Yes, sir, it is.

Q. And is the second of those booklets the one which has been identified as "Defendant's Exhibit 1"?

A. Yes, sir.

Q. And this second booklet is the booklet that was directed to your line production men to tell them what they should do in keeping their departments and their operations safe?

A. Well, that is true except of course that copies were given to the safety engineer so that the safety engineer would know what the line supervisors should do.

Q. Now, what else was done before reducing the duties [fol. 1153] and functions of the safety engineering department to writing?

A. Job description was written up, job classifications.

Q. Before we come to the individual jobs, I want to get the department itself and to direct your attention: were those documents called Manuals of Procedure with respect to the safety engineering department?

A. Yes, sir, they were.

Q. And some documents were prepared with respect to all departments in the plant? A. To all departments.

Q. What was the general nature of these manuals of Procedure? What were they supposed to be? What functions did they serve?

A. They served the function of setting forth the rules and regulations and requirements of the manner and the way, and the records each department should keep to function properly.

[fol. 1154]

## Defendant's Exhibit 11.

Date  
Issued 4/7/43  
Date  
Effective 4/7/43  
Revised

The United States Cartridge Co.  
St. Louis, Missouri  
Manual of Procedure  
Departmental Procedure—Safety  
Department  
Accident Prevention and Reporting

Bulletin  
Number 16-1  
Unit Safety  
Engineering  
Page 1 of 4

## Purpose

The purpose of this bulletin is to outline the procedure to be followed by the safety inspection section of the safety department for the prevention and reporting of accidents.

## Inspection Function

A safety engineer will be assigned to each manufacturing unit and to each special function of plant operation on each working shift, whose duty it will be to make inspection of each department in his unit. These inspections will cover the building structure, the machinery used in the manufacturing processes, tools, equipment and materials, and the working methods of personnel, in an effort to discover and eliminate any existing or potential hazard that may exist, by the development and application of corrective measures.

## Inspection of Tunnels

There also will be a safety engineer assigned to the inspection of atmospheric conditions of all tunnels and crawl spaces. In all places where there is poor circulation of air, the safety engineer assigned to this function will take regular daily atmospheric readings with an explosimeter and carbon monoxide indicator. If these readings indicate a dangerous concentration of gases, the safety engineer will immediately evacuate the area, ventilate it, and notify his supervising safety engineer to have the plant maintenance department correct the hazard at its source. In any situation where gas masks are necessary, the supervising safety engineer will determine the proper kind of mask to be used and will arrange for the supervision of its use. If gas masks are to be used, a minimum of two masks will be issued to each person required to wear one.

## Special Investigations

The safety engineer will conduct a special investigation of each accident [occurring] in the area assigned to him to determine the reason for the accident, in order that corrective steps may be taken to prevent [occurrence] of similar accidents in the future. In like manner, special studies will be made of cases of occupational illness in order that the facts obtained may be used for the prevention of the illness of other employees.

## Rehabilitation of Employees

Another function of the safety engineer will be to assist in the rehabilitation of employees in his area who have been partially disabled. When such an employee returns to work, the safety engineer will contact the supervisor of the unit to which the injured person is assigned and will assist in placing the disabled person in some type of productive operation which will not further his disability.

## Checking for Unsafe Conditions or Acts

In striving for the prevention of accidents, the safety engineers will watch particularly for the following:

1. Failure of employees to wear proper clothing, and failure to use safety equipment provided.
2. Unsafe conduct on the part of the employee.
3. Any unsafe condition that might possibly cause an accident or injury to an employee or damage to material and equipment.

## Reporting Employee Violations of Safety Regulations

When a safety engineer observes an unsafe condition or an unsafe act that presents no immediate danger, he will call it to the attention of the foreman and will enter such infraction or condition on the "Report

[fol. 1155]

**Date Issued** 4/7/43      **The United States Cartridge Co.**  
**Date Effective** 4/7/43      **St. Louis, Missouri**  
**Revised**                  **Manual of Procedure**  
**Departmental Procedure—Safety**  
**Department**  
**Accident Prevention and Reporting**

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Unit Safety  
Engineering  
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of Employee Violations of Safety Regulations' (Form IRS-25—Rev. 2/43) which will be submitted to his supervising safety engineer at the end of the shift. Form IRS-25 will show the following information:

1. The number of the department in which the infraction occurred.
2. Badge number of the person who was performing the unsafe act.
3. The name and badge number of the foreman or supervisor of the employee concerned.
4. Remarks relative to the action taken by the foreman or supervisor for the correction of the unsafe condition, and other information pertinent to the case.

Violations reported by each safety engineer will be compiled into a comprehensive daily report showing all of the violations in the plant for that day. This comprehensive report will be duplicated and sent to division heads, department heads, superintendents of operating units, and other production agencies concerned, and all safety engineers.

#### Daily Summary

In addition to this comprehensive report, a daily summary report will be compiled showing the frequency and type of violations for each building, by shifts. This report will be sent to the Director of Personnel, with a copy to the Chief Safety Engineer.

#### Correction of Hazardous Conditions

When a safety engineer discovers what he considers to be the existence of an extremely hazardous condition, he is authorized to take immediate direct action

to eliminate the hazard. Any unsafe condition in the restricted area also will fall under this category. The safety engineers will use discretion in the exercise of this authority so that there will be no unnecessary interruption of production. A report of the circumstances and of the action taken will be promptly made to the foreman or supervisor in charge. Cases of this type also will be reported on Form IRS-25.

#### Occurrence of Accidents

If an accident occurs to an employee, regardless of how slight it may be, the employee will be required to report to the first aid station for treatment, after obtaining the verbal consent of his foreman or supervisor. After treating the injuries, the nurse on duty will prepare a "Case Record" (Form IRM-13—Rev. 2-42). This form will completely identify the employee as to name, badge number, and location. It also will carry a complete description of the nature of the injury and the treatment given (See Bulletin Number 14-3).

#### Use of Form IRS-39-A

Several times during the day, the safety engineer will call at the first aid stations located in the unit to which he is assigned and collect the triplicate copies of Forms IRM-13 prepared by the nurse. For every Form IRM-13 except those marked "Revisit", or those covering illness, the safety engineer will prepare in original only a "Report of Employee's Accident" (Form IRS-39-A—Rev. 2-43). The safety engineer will contact any employees who were involved in the accident in order that the preparation of Form IRS-39-A may be as complete as possible. Form IRS-39-A will show personal information pertaining to the employee and the following analysis of the accident:

[fol. 1156]

Date	The United States Cartridge Co.	Bulletin
Issued	St. Louis, Missouri	Number 16-1
Date	Manual of Procedure	Unit Safety
Effective 4/7/43	Departmental Procedure—Safety	Engineering
Revised	Department	
	Accident Prevention and Reporting	Page 3 of 4

1. Occupational group.
2. Agency causing accident.
3. What employee was doing.
4. Type of accident.
5. Unsafe condition.
6. Unsafe personal factor.
7. Unsafe act.
8. Location and nature of injury.

The safety engineer will sign the form and attach to it the corresponding Form IRM-13. At the end of the shift, the safety engineer will turn in all Forms IRM-13 and IRS-39-A to his supervising safety engineer in Building 222B.

#### Use of Form IRS-5:

In addition to Form IRS-39-A, the safety engineer also will prepare a "Safety Inspection Report" (Form IRS-5—Rev. 5/42) on all lost time accidents, and on other than lost time accidents when, in the opinion of his supervising engineer, an additional report is required. Form IRS-5 will show the following information:

1. Name and badge number of employee.
2. Occupation.
3. Date and time.

4. Location.
5. Injury.
6. Treatment.
7. Complete details of the accident.
8. Detailed steps taken for correction.

Form IRS-5 will be turned in to the supervising safety engineer's office at the end of the shift.

#### Distribution of Form IRS-5

The supervising safety engineer's office then will use the information on the long-hand copy of Form IRS-5 to prepare in four copies a typewritten report, also on Form IRS-5. Distribution of the typed Form IRS-5 will be as follows:

Original and Duplicate—Sent to the safety department clerical office.

[fol. 1157]

**Date** The United States Cartridge Co.  
**Issued** 4/7/43 St. Louis, Missouri  
**Date** Manual of Procedure  
**Effective** 4/7/43 Departmental Procedure—Safety  
**Revised** Department  
Accident Prevention and Reporting

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Number 16-1.  
Unit Safety  
Engineering  
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**TriPLICATE**—To be transmitted from the general safety engineer in charge of safety engineering to the assistant chief safety engineer, then to the chief safety engineer who will pass it on to the superintendent or department head of the building or department in which the accident occurred.

**Fourth Copy—Retained by the supervising safety engineer.**

### **Additional Use of Form IRS-5**

Form IRS-5 also will be used by the safety engineer to prepare and submit a daily log of the activities on his shift and to report any unusual accident, occurrence, or condition that the safety engineer thinks should be covered by a special report. From the individual daily logs turned in by the safety engineers, each supervising safety engineer will prepare a daily log of his shift, consisting of the most important items noted by the safety engineers. This report will be turned in to the general safety engineer in charge of safety engineering.

### **Forms Mentioned**

The following forms are mentioned in this procedure:

**Form IRS-25 (Rev. 2-43) "Report of Employee  
Violations of Safety Regulations"**

**Form IRM-13 (Rev. 2/42) "Case Record"**

Form IRS-39-A (Rev. 2-43) "Report of Employee Accident"

Form IRS-5 (Rev. 5-42) "Safety Inspection Report"

#### Bulletin Referred To

The following bulletin is referred to in this procedure:

Bulletin Number 14-3 "Accident and Illness Procedures"

#### Departments Affected

The following departments are affected by this procedure:

Safety Department

Plant, Maintenance Department

Medical Department

Production Control Department

Manufacturing Department

[fol. 1158]

Date Issued	3/25/43	The United States Cartridge Co. St. Louis, Missouri	Bulletin Number 16-2
Date Effective	3/25/43	Manual of Procedure Departmental Procedure—Safety Department Educational Program	Unit Instruction, Stores & Records Page 1 of 3

### Purpose

The purpose of this bulletin is to outline in a general way the program of safety education.

### Class Room Instruction

The greater part of the educational program will consist of class room sessions designed for the various occupational groups as follows:

1. All adjuster trainees, building inspector trainees, inspector trainees, machine tool trainees, and supervisory trainees will be given an instruction course consisting of ten hours of first aid and six hours of safety.
2. In addition to the above, all supervisory trainees will be given an additional eight hours of instruction on safety in foremanship.
3. Female gagers will be given six hours of instruction on first aid and safety.
4. All plant guards will be given a preliminary course consisting of ten hours of instruction on first aid. This ten hour course will include a small amount of training in safety. At some time after the completion of this preliminary course, all plant guards will be given an additional ten hours of instruction on first aid and safety.
5. Firemen will be given a standard Red Cross first aid course of twenty hours. This course will be supplemented by weekly meetings, at which time the firemen will be given instruction on prob-

lens of first aid, disaster procedure and firemanship.

6. Drivers of explosive trucks will be given 10 hours of instruction on safety in the handling of explosives. This will include the Interstate Commerce Commission and Ordnance Department motor carrier safety regulations.

7. Powder handlers will be given 10 hours of instruction in the handling of explosives. This course also will include some fundamentals of first aid and instruction in the use of emergency fire equipment.

8. Operators of electric trucks will be given 6 hours of instruction on safety in the operation of industrial power trucks.

9. Weekly meetings will be held for electricians during which they will be given instruction on the prone pressure method of resuscitation, control of bleeding, and safe practices in the operation and handling of electrical equipment.

[fol. 1159]

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Unit Instruction,  
Stores & Records  
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10. Special courses will be inaugurated from time to time for instructions on special hazards for certain occupational groups.

All of the above courses will be designed to meet the needs of the individual groups and will include instruction on accident hazards that will be encountered on the job.

Safety Manual

A safety instruction manual covering the subject matter will be loaned to each employee who attends instruction classes under the direction of the safety department. These manuals will be returned to the safety department by the trainees within a reasonable time. However, supervisors, guards, drivers of explosive trucks, powder handlers, and firemen will be allowed to keep the instruction manuals in their possession as long as they remain with the company.

## Use of Form IRS-44

A "Certificate of First Aid Instructions" (Form IRS-44—Rev. 6/42) will be issued to each trainee who completes an instruction course in first aid. This certificate will show the employee's name and badge number, the date on which the course was completed, and will be signed by the instructor. Trainees who complete a standard Red Cross first aid course will be issued a Red Cross first aid certificate.

## **Employee's Training Record**

Each month, the names of all of the employees who have attended training courses during the month will be alphabetically posted in an "Employee's Training Record" (Form IRS-12-A). This card will show the

name, badge number and address of each employee, his occupation code, date attended, courses taken, and the grade. When an employee takes more than one training course, an individual record will be kept on Form IRS-12-A.

### Safety Engineers' Weekly Meetings

There will be a continuous process of education within the safety department by means of weekly meetings. These meetings will be designed to give the safety engineers a broader understanding of their jobs, and will consist of the discussion of such topics as industrial organization, industrial psychology and safety engineering.

### Posters

As part of the educational program, there will be one safety engineer in charge of safety posters. He will be responsible for the allocation and the issuing of posters supplied by the National Safety Council, as well as those created by the safety department. A "Record of Bulletin Boards and Postings" (Form IRS-32) will be kept for each bulletin board. This card will show the number of each poster assigned to that bulletin board and the date upon which it was posted. The use of this card record will enable the safety engineer to rotate postings so that one poster will not remain for too long a time on any one board. In addition to the posters on the regular bulletin boards, original posters created by the safety department will be placed on easels and rotated among the various units. The safety engineer in charge of posters also will handle the issuance of safety bulletins and bulletins concerning any new ordnance regulations.

### Forms Mentioned

The following forms are mentioned in this procedure:

Form IRS-44 (Rev. 6/42) "Certificate of First Aid Instructions"

[fol. 1160]

Date Issued	3/25/43	The United States Cartridge Co. St. Louis, Missouri Manual of Procedure Departmental Procedure—Safety Department Educational Program	Bulletin Number 16-2 Unit Instruction, Stores & Records Page 3 of 3
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Form IRS-12-A "Employee's Training Record"

Form IRS-32 "Record of Bulletin Boards and Postings"

#### Departments Affected

The following departments are affected by this procedure:

Safety Department

Plant Protection Department

[fol. 1161]

Date Issued 12/14/43      The United States Cartridge Co.  
Date Effective 12/14/43      St. Louis, Missouri  
Manual of Procedure  
Departmental Procedure—Safety  
Engineering Department  
Placement of Physically Handi-  
capped Employees

Bulletin  
Number 16-3  
Unit Placement  
Page 1 of 4

#### Purpose

The purpose of this bulletin is to outline the procedure to be followed by the placement unit of the safety engineering department in the placement and transfer of employees classified in "B" or "C" medical classification by the medical department.

#### Placement Schedule

A schedule of all hourly rated job classifications, indicating the particular physical deficiency that will be allowed in the placement of physically handicapped employees is set forth in detail in safety engineering department Standard Practice Instruction Bulletin Number 16-3.

#### Medical Examination and Classification

As outlined in Bulletin Number 14-2, prospective employees will be sent by the employment department interviewer to the medical department for a pre-employment examination. As a result of this examination, the employee will be classified as class "A", class "B", or class "C", depending upon how he measures up to the medical standards specified in Bulletin Number 14-1. Employees receiving a class "B" or class "C" medical classification will be assigned a badge number in the series from 60,000 to 69,999. A badge number in this series will serve as a reminder to the employee's supervisor that the employee cannot be transferred from his present job to a position other than one indicated on the medical placement list without approval by the placement unit and the medical department.

#### Placement of Class "B" and "C" Employees

At the time of induction employees having a class "B" or class "C" medical classification will present

their "Notice of Employment" (Form IRP-1—Rev. 6-43) to the safety engineer in the placement unit, Building 107. The safety engineer will review the medical department's summarization of the employee's physical deficiency as shown on Form IRP-1. From the recommendation of the medical department the safety engineer will check the position that the employee has been hired to fill and will contact the unit superintendent or department head under which the employee will work to ascertain the exact extent of his duties. If the employee's physical condition is such that he can satisfactorily perform the duties that are required of the prospective position, a record will be made on a 3 x 5 card showing the employee's name, badge number, physical deficiency and his location in the plant.

#### Re-Examination of Class "C" Employees

A class "C" employee is one hired on the condition that he visit his private physician to have a medical deficiency removed or treated within a certain specified period. When a class "C" employee clears through the safety engineer in the placement unit, the safety engineer will establish a follow-up card file from which he will notify the medical department by memorandum within a period of from thirty to sixty days after employment of the individual that the employee should be re-examined. The medical department will prepare an "Introduction to Medical Department" (Form IRM 9—Rev. 9-42) to call the employee in for an examination. If, in the opinion of the medical department, the physical disability has either been corrected or materially improved, the medical department may recommend to the placement unit that the conditional employee be placed in either a class "A" or class "B" classification. If such a change in classification is recommended, it will be handled as described in the following paragraph. If the physical disability or the condition of the employee has not been treated or has not shown the necessary improvement, the medical department will report its recommendations to the placement unit, which will arrange with the unit superintendent or department head to have the employee examined by a physician of the employee's choice.

[fol. 1162]

Date Issued 12/14/43  
 Date Effective 12/14/43

The United States Cartridge Co.  
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 capped Employees

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tendent or department head that the recommendations of the medical department be carried out.

#### Change of Medical Classification

When a class "B" or class "C" employee is changed to a class "A" employee the placement unit will request the employee service department to assign him a new badge number in place of the number in the 60,000 series originally assigned. If a class "A" employee should be reclassified by the medical department as a class "B" employee, he will be referred to the placement unit for a check of his established job, to see if his physical condition is such that he can remain on the same job. If a transfer is indicated it will be handled as outlined in the paragraph below and the placement unit will request the assignment of a new badge number in the 60,000 series.

#### Transfer of Class "B" and Class "C" Employees

Whenever a class "B" or class "C" employee is to be transferred to a different department or job classification, the "Request for Rate Change or Transfer" (Form G-49—Rev. 1/43) must be forwarded to the placement unit for entry on the employee's record. Form G-49 then will be returned to the originator for handling as outlined in Bulletin Number 53-3. In no case will a transfer involving a class "B" or class "C" employee to an occupation not indicated on the approved medical placement list be completed without a medical re-examination and without the joint approval of the safety engineering department and the medical department.

## Special Arrangements for Injured Employees

When an employee receives an injury which the medical department feels is too severe to permit him to return to his regular job, but not severe enough to warrant sending the employee home, the medical department will turn its recommendations over to the placement unit. This unit will contact the employee's department head or supervisor and arrange for the employee to be placed on some established job that he can perform for the duration of the injury or until the medical department advises that he may resume his regular job. Each day the placement unit will prepare in four copies a memorandum which will show the case history of each injured employee who returned to work to prevent lost time and will outline the agreement reached with the employee's supervisor for placing him on a different job for the duration of the injury. This memorandum will be distributed as follows:

Original—To the chief safety engineer.

Duplicate—To the medical department.

TriPLICATE—To the labor relations department which will forward it to the personnel assistant in the building in which the employee works. The personnel assistant will check to see that the agreement made by the supervisor is being followed and will report his findings to the manager of the labor relations department.

Fourth Copy—Retained by the placement unit.

[fol. 1163]

Date	The United States Cartridge Co.	Bulletin
Issued 12/14/43	St. Louis, Missouri	Number 16-3
Date	Manual of Procedure	Unit Placement
Effective 12/14/43	Departmental Procedure—Safety	Page 3 of 4
	Engineering Department	
	Placement of Physically Handi-	
	capped Employees	

### Lost Time Injuries

In the event an employee has been injured to such an extent that he must be sent to an outside hospital or physician, or to his home, the safety engineer in the placement unit will obtain as much information regarding the accident as possible from the employee, or from the plant guard or medical department before the employee leaves the plant premises. The safety engineer will prepare in triplicate a "Preliminary Employee's Injury Report," Form IRS-28—Rev. 3/42, which will show pertinent information about the employee and facts regarding the accident and the nature of the injury. Form IRS-28 will be distributed as follows:

Original—To the chief safety engineer

Duplicate—To the commanding officer

TriPLICATE—To the plant protection division.

### Investigation by Safety Inspector

After the preparation and distribution of Form IRS-28, the safety engineer then will call, by telephone, the superintendent of the unit in which the accident occurred and inform him of the extent of the injuries so that he, in turn, may inform the unit safety inspector. The unit safety inspector then will make a complete investigation of the accident and report it as outlined in Bulletin Number 16-1.

### Checking Amount of Lost Time

On all lost time accidents, the safety engineering department clerical office will assemble the following

documents and send them to the placement unit for checking.

1. A copy of "Safety Inspection Report" (Form IRS-5—Rev. 5/42) obtained from the unit safety inspector.
2. Duplicate copy of "Report of Examination" (Form IRM-4) obtained from the medical department.
3. Fifth copy of "Surgeon's Report" (Form IRM-11A) obtained from the medical department.

The placement unit will hold the above papers until the injured employee returns to work, at which time it will record the amount of lost time and return the papers to the clerical office.

#### Return to Work of Injured Employee

When an employee who has been absent because of an injury returns to work, he will be required to clear through the medical department as outlined in Bulletin Number 14-3. When it is the opinion of the medical department that the employee can return to an established job in the plant (not necessarily his regular job), he will be referred to the placement unit for assignment. This unit will check his condition with available positions and recommend his assignment to a job suitable to his physical condition from the standpoint of safety. The placement unit will turn its findings over [the] the employee service department with recommendations for reinstatement or, if the employee has not been terminated, for transfer, the arrangements for which then will be made by the employee service department.

[fol. 1163-A]

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	Engineering Department	
	Placement of Physically Handi-	
	capped Employees	

### Forms Mentioned

The following forms are mentioned in this procedure:

- Form IRP-1 (Rev. 6/43) "Notice of Employment"
- Form IRM-9 (Rev. 9/42) "Introduction to Medical Department"
- Form G-49 (Rev. 4/43) "Request for Rate Change or Transfer"
- Form IRS-28 (Rev. 3/42) "Preliminary Employee's Injury Report"
- Form IRS-5 (Rev. 5/42) "Safety Inspection Report"
- Form IRM-4 "Report of Examination"
- Form IRM-11A "Surgeon's Report"

### Bulletins Referred To

The following bulletins are referred to in this procedure:

- Standard Practice Instructions—Bulletin Number 16-3 "Medical Placement Schedule"
- Bulletin Number 14-2 "Pre-Employment Examination"
- Bulletin Number 14-1 "Medical Standards"

Bulletin Number 53-3 "Rate Changes or Transfers—Hourly and Salary Rated Employees"

Bulletin Number 16-1 "Accident Prevention and Reporting"

Bulletin Number 14-3 "Accident and Illness Procedure"

#### Departments Affected

The following departments are affected by this procedure:

Safety Engineering Department

Medical Department

Employee Service Department

Employment Department

Labor Relations Department

\* \* \* \* \*

[fol. 1164]

Date Issued 4/7/45  
 Date Effective 4/7/45

The United States Cartridge Co.  
 St. Louis, Missouri  
 Departmental Instructions  
 Safety Engineering Department  
 Placement of Physically Handicapped  
 Employees

Bulletin Number 16-3  
 Reference Procedure No.  
 Page 1 of 4

### Purpose

The purpose of this departmental instructions bulletin is to outline the procedure to be followed by the job placement section of the safety engineering department in the placement and transfer of employees classified in "B" or "C" medical classification by the medical department.

### Placement Schedule

A schedule of all hourly rated job classifications, indicating the particular physical deficiency that will be allowed in the placement of physically handicapped employees is set forth in detail in safety engineering department standard practice instructions Bulletin Number 16-3.

### Medical Examination and Classification

As outlined in departmental instructions Bulletin Number 14-2, prospective employees will be sent by the employment department interviewer to the medical department for a pre-employment examination. As a result of this examination, the employee will be classified as class "A", class "B" or class "C", depending upon how he measures up to the medical standards specified in Departmental Instructions Bulletin Number 14-1. Employees receiving a class "B" or class "C" medical classification will be assigned a badge number in the series from 60,000 to 69,999. A badge number in this series will serve as a reminder to the employee's supervisor that the employee cannot be transferred from his present job without approval of the job placement section or the medical department.

### Placement of Class "B" and "C" Employees

At the time of induction, employees having a class "B" or class "C" medical classification will present their "Notice of Employment" (Form IRP-1—Rev.

6-43) to the safety engineer in the job placement section, Building 107. The safety engineer will review the medical department's summarization of the employee's physical deficiency as shown on Form TRP-1, and from the recommendation of the medical department, will check the position that the employee has been hired to fill. If the employee's physical condition is such that he can satisfactorily perform the duties that are required of the prospective position, a record will be made on a 3 x 5 card showing the employee's name, badge number, physical deficiency and his location in the plant.

#### Re-Examination of Class "C" Employees

A class "C" employee is one hired on the condition that he visit his private physician to have a medical deficiency removed or treated within a certain specified period. When a class "C" employee clears through the safety engineer in the job placement section, the safety engineer will establish a follow-up card for the employee, from which he will notify the medical department by memorandum within a period of from thirty to sixty days after employment of the individual that the employee should be re-examined. Upon receipt of such notification, the medical department will prepare an "Introduction to Medical Department" (Form IRM-9 Rev. 9-42) to call the employee in for an examination. If, in the opinion of the medical department, the physical disability has either been corrected or materially improved, the medical department may recommend to the job placement section that the "Conditional" employee be placed in either a class "A" or class "B" classification. If such a change in classification is recommended, it will be handled as described in the following paragraph. If the physical disability or the condition of the employee has not been treated or has not shown the necessary improvement, the medical department will report its recommendations to the job placement section which will arrange with the unit superintendent or department head that the recommendations of the medical department be carried out.

[fol. 1165]

Date Issued: 4/7/45	The United States Cartridge Co. St. Louis, Missouri	Bulletin Number: 163
Date Effective: 4/7/45	Departmental Instructions Safety Engineering Department Placement of Physically-Handicapped Employees	Reference Procedure No.
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### Change of Medical Classification

When a class "B" or class "C" employee is changed to a class "A" employee, the job placement section will request the plant protection division to assign him a new badge number in place of the number in the 60,000 series originally assigned. If a class "A" employee should be reclassified by the medical department as a class "B" employee, he will be referred to the job placement section for a check of his established job to see if his physical condition is such that he can remain on the same job. If a transfer is indicated it will be handled as outlined in the paragraph below and the job placement section will request the assignment of a new badge number in the 60,000 series.

### Transfer of Class "B" and Class "C" Employees

Whenever a class "B" or class "C" employee is to be transferred to a different department or job classification, the "Request for Rate Change or Transfer" (Form G-49—Rev. 1-43) must be forwarded by the originator to the job placement section for entry on the employee's record. Form G-49 then will be returned to the originator for handling as outlined in Departmental Instructions Bulletin Number 53-3.

### Special Arrangements for Injured Employees

When an employee receives an injury which the medical department feels is too severe to permit him to return to his regular job, but not severe enough to warrant sending the employee home, the medical department will turn its recommendations over to the job placement section. This section will contact the

employee's department head or supervisor and arrange for the employee to be placed on some established job that he can perform for the duration of the injury or until the medical department advises that he may resume his regular job. Each day the job placement section will prepare, in five copies, a memorandum which will show the case history of each injured employee who returned to work to prevent lost time, and will outline the agreement reached with the employee's supervisor for placing him on a different job for the duration of the injury. This memorandum will be distributed as follows:

- Original—Routed to the chief safety engineer
- Duplicate—Routed to the medical department
- TriPLICATE—Routed to the labor relations department
- Fourth Copy—Routed to the safety engineering department clerical office
- Fifth Copy—Retained by the job placement section.

#### Preparation and Distribution of Form IRS-28

In the event an employee has been injured to such an extent that he must be sent to an outside hospital, the safety engineer in the job placement section will obtain as much information regarding the accident as possible from the employee, or from the plant guard or medical department before the employee leaves the plant premises. The safety engineer will prepare in five copies, a "Preliminary Employee's Injury Report" (Form IRS-28—Rev. 1/44) which will show pertinent information about the employee and facts regarding the accident and the nature of the injury. Form IRS-28 will be distributed as follows:

[fol. 1166]

**Date Issued** 4/7/45      **The United States Cartridge Co.**  
**Date Effective** 4/7/45      **St. Louis, Missouri**  
**Departmental Instructions**  
**Safety Engineering Department**  
**Placement of Physically Handicapped Employees**

**Bulletin Number** 16-3  
**Reference Procedure No.**  
**Page 3 of 4**

**Original**—Routed to the chief safety engineer.

**Duplicate**—Routed to the safety and security division of the ordnance department.

**TriPLICATE**—Routed to the plant protection division.

**Fourth Copy**—Routed to the safety engineering department clerical office.

**Fifth Copy**—Routed to the general superintendent.

#### Investigation of Accident

After the preparation and distribution of Form IRS-28, the job placement section will telephone the superintendent of the unit in which the accident occurred, and inform him of the extent of the injuries so that he in turn may inform the employee's supervisor. The employee's supervisor then will make a complete investigation of the accident and report it as outlined in Departmental Instructions Bulletin Number 16-1.

#### Checking Amount of Lost Time

On all lost time accidents, the safety engineering department clerical office will assemble the following documents and send them to the job placement section for checking.

1. A copy of "Accident Investigation Report" (Form IRS-5—Rev. 5-42) obtained from the employee's supervisor.

2. A copy of "Report of Examination" (Form IRM-4) obtained from the medical department.

3. A copy of "Surgeon's Report" (Form IRM-1A) obtained from the medical department.

The job placement section will review the above papers and record the amount of lost time, after which the papers will be returned to the clerical office.

### Return to Work of Injured Employee

When an employee who has been absent because of an injury returns to work, he will be required to clear through the medical department as outlined in Departmental Instructions Bulletin Number 14-3. When it is the opinion of the medical department that the employee can return to an established job in the plant (not necessarily his regular job), he will be referred to the job placement section for assignment. This section will check his condition with available positions and recommend his assignment to a job suitable to his physical condition from the standpoint of safety. The job placement section will turn its findings over to the employee service department with recommendations for reinstatement, or if the employee has not been terminated, for transfer, the arrangements for which then will be made by the employee service department.

### Forms Mentioned

The following forms are mentioned in these instructions:

Form IRP-1 (Rev. 6/43) "Notice of Employment"

[fol. 1167]

Date                      The United States Cartridge Co.  
 Issued 4/7/45              St. Louis, Missouri  
 Date                      Departmental Instructions  
 Effective 4/7/45              Safety Engineering Department  
                             Placement of Physically Handicapped  
                             Employees

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- Form IRM-9 (Rev. 9/42) "Introduction to Medical Department"
- Form G-49 (Rev. 1/43) "Request for Rate Change or Transfer"
- Form IRS-28 (Rev. 1/44) "Preliminary Employee's Injury Report"
- Form IRS-5 (Rev. 5/42) "Accident Investigation Report"
- Form IRM-4 "Report of Examination"
- Form IRM-11A "Surgeon's Report"

#### Bulletins Referred To

The following bulletins are referred to in these instructions:

Standard Practice Instructions Bulletins Number 16-3 "Medical Placement Schedule"

#### Departmental Instructions

Bulletin Number 14-2 "Pre-Employment Examination"

Bulletin Number 14-1 "Medical Standards"

Bulletin Number 53-3 "Rate Changes or Transfers—Hourly and Salary Rated Employees"

Bulletin Number 16-1 "Accident Prevention and Reporting"

Bulletin Number 14-3 "Accident and Illness Procedure"

#### Departments Affected

All departments are affected by these instructions.

[fol. 1168]

Date Issued 4/9/45  
 Date Effective 3/1/45  
 Revised

The United States Cartridge Co.  
 St. Louis, Missouri  
 Standard Practice Instructions—  
 Safety Engineering Department  
 Medical Placement Schedule

Bulletin  
 Number 16-3  
 Reference  
 Procedure No.  
 Page 1 of 14

### Purpose

The purpose of this bulletin is only to list the physical defects which are permissible in each of the standard company job classifications outlined in Departmental Instructions Bulletin Number 1-17. For detailed explanation of the placement procedure, see Departmental Instructions Bulletin Number 16-3.

### Schedule of Defects

Defect Code	Physical Defect
1	Vision
2	Color Discrimination
3	Hearing
4	Monocular Vision
5	Back
6	Varicose Veins
7	Allergy
8	Chest
9	Heart and Blood Pressure

### Explanation of Placement Schedule

The symbol "x" in any column on the following pages indicates that the defect coded at the head of the corresponding column is acceptable in the occupation listed in the column headed "Occupation Name." Physical defects not listed must be given individual consideration.

### Transfers

The defects listed above are the more frequent types of disabilities, and employees having these disabilities can be transferred temporarily according to the following charts. However, all such transfers made, must be reported to the job placement section of the safety engineering department.

[fol. 1169]

**Date** The United States Cartridge Co.  
**Issued** 4/9/45 **St. Louis, Missouri**  
**Date** Standard Practice Instructions—  
**Effective** 3/1/45 Safety Engineering Department  
Revised Medical Placement Schedule

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Date  
Issued 4/9/45  
Date  
Effective 3/1/45  
Revised

The United States Cartridge Co.  
St. Louis, Missouri  
Standard Practice Instructions—  
Safety Engineering Department  
Medical Placement Schedule

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Occupational Code	Occupation Name	Physical Defect Code								
		1	2	3	4	5	6	7	8	9
<b>Production Operators—(Continued)</b>										
42	Solderer—test, seal, and pack chests.	x	x	x				x		
45	Annealing machine operator .....	x	x	x			x	x	x	
48	Tracer bullet polisher (explosive) .....						x			
49	Anneal, pickle and wash operator.....	x	x	x	x	x	x			
50	Primer mixer .....	x					x			
51	.50 caliber case gage operator .....	x	x	x	x	x	x	x	x	x
57	Sort-lubricate case operator .....	x	x		x	x	x	x	x	x
62	Tracer mixer .....						x			
66	Cartridge verify operator (explosive) .....		x		x	x	x	x	x	x
67	.30 caliber breakdown operator (explosive) .....	x								
69	.50 caliber breakdown operator (explosive) .....	x	x	x	x	x				
<b>Gagers</b>										
120	Gager .....				x					
121	Gager instructress .....	x			x	x	x	x	x	x
122	Female gager (explosives) .....				x	x	x	x	x	x

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[fol. 1171]

Date  
Issued 4/9/45  
Date  
Effective 3/1/45  
Revised

The United States Cartridge Co.  
St. Louis, Missouri  
Standard Practice Instructions—  
Safety Engineering Department  
Medical Placement Schedule

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Occupational Code	Occupation Name	Physical Defect Code								
		1	2	3	4	5	6	7	8	9

#### Chief Adjusters—(Continued)

157	Bullet assembly chief adjuster.....	x	x	x	x	x	x	x	x
158	Primer insert chief adjuster.....	x	x	x	x	x	x		
159	Cartridge loading chief adjuster.....	x	x	x	x	x	x		
160	Gage and weigh chief adjuster.....	x	x	x	x	x	x	x	x
161	Clip manufacture chief adjuster.....	x	x*	x	x	x	x	x	x
162	.50 caliber case gage chief adjuster..	x	x	x	x	x	x	x	x
163	Lead slug chief adjuster.....	x	x	x	x	x	x		x
164	Primer assembly chief adjuster.....	x	x	x	x	x	x		
165	Tracer charge chief adjuster.....	x	x	x	x	x			
166	Primer cup and anvil chief adjuster.	x	x	x	x	x	x	x	x
167	Reload chief adjuster.....	x	x	x*	x	x	x		

#### Adjusters

209	.30 caliber blank and cup adjuster.....	x	x	x	x	x	x	x	x
201	.30 caliber draw press adjuster.....	x	x	x	x	x	x	x	x
203	.30 caliber bump pocket and head ad- juster.....	x	x	x	x	x	x	x	x
204	.30 caliber taper and plug adjuster.....	x	x	x	x	x	x	x	x
206	.30 and .50 caliber primer cup & an- vil blank & form press adjuster.....	x	x	x	x	x	x	x	x
208	.30 caliber case trim adjuster.....	x	x	x	x	x	x	x	x
209	.30 caliber head turn adjuster.....	x	x	x	x	x	x	x	x
210	.30 caliber primer insert adjuster.....	x	x	x	x	x			
211	.30 caliber and .50 caliber primer as- sembly adjuster.....	x	x	x	x	x			x
213	.30 caliber cartridge — clip assembly adjuster .....	x	x	x	x	x	x	x	x
214	Lead slug forming machine adjuster.....	x	x	x	x	x			x

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**Adjusters—(Continued)**

241	.50 caliber straight line loading adjuster .....	x	x	x	x	x	x	
242	.50 caliber gage and weigh adjuster .....	x	x	x	x	x	x	x
243	.50 caliber annealing machine adjuster .....	x	x	x	x	x	x	x
244	.50 caliber packing machine adjuster .....	x	x	x	x	x	x	x

**Unit Machine-Repair Shop**

275	Machinist class B unit repair shop .....	x	x	x			x	x	x
276	Machinist class C unit repair shop .....	x	x	x			x	x	x
280	Machinist helper unit repair shop .....	x	x				x	x	x
285	Repair shop working foreman .....	x	x	x	x		x	x	x

**Inspection**

300	Roving inspector (case and bullet) .....	x	x	x		x	x	x	x
301	Roving inspector (explosives) .....	x	x			x	x		
303	First case inspection visual .....	x	x	x		x	x	x	x
304	Finish case inspector .....	x	x	x		x	x	x	x
305	Bullet inspector .....	x	x	x		x	x	x	x
306	Primer cup insert inspector .....	x	x			x	x		
310	Primer inspector (cup and pellet) .....	"	x	x		x	x	x	x
315	Finish cartridge inspector .....	x	x			x	x	x	x
316	Tracer bullet inspector .....					x			
317	Production inspection trainee .....	x	x	x		x	x	x	x
318	Production inspection trainee (explosive) .....	x	x			x	x		
319	Inspection supervisor 100% station and roving inspection .....	x	x	x	x	x			x
320	Inspector supervisor explosive .....	x	x		x	x			

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Occupational Code	Occupation Name	Physical Defect Code								
		1	2	3	4	5	6	7	8	9
Inspection—(Continued)										
323	Sample girl .....	x			x	x				x
325	Floorman inspection .....	x	x	x	x			x	x	
326	Floorman inspection explosives .....	x		x				x		
327	Floorman—working foreman .....	x	x	x	x			x		
328	Floorman—explosive inspection .....	x		x			x			
Transportation										
400	Locomotive engineer (Diesel) .....				x	x	x	x		
401	Locomotive maintenance mechanic .....	x					x	x	x	x
402	Truck dispatcher .....	x	x		x	x	x	x	x	x
404	Driver truck (explosive straight truck) .....						x			
405	Driver—car and truck (non-explosive) .....	x			x	x	x	x	x	
406	Switchman .....					x	x	x	x	
407	Yard foreman .....	x	x	x	x	x	x	x	x	x
408	Truck driver—helper .....	x	x		x		x	x	x	x
409	Driver—truck (explosive tractor trailer) .....						x			
410	Tractor driver helper .....						x			
Garage										
425	Garage foreman .....	x	x	x	x	x	x	x	x	x
426	Garage attendant .....	x	x	x	x			x		
427	Garage mechanic .....	x	x	x	x			x		
429	Electric truck battery charger .....	x	x		x		x			
Ballistics										
450	Chronograph operator .....	x	x			x	x	x	x	x

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Occupational Code	Occupation Name	Physical Defect Code								
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#### Ballistics—(Continued)

451	Gunner—class A	x			x			x
452	Gunner—class B	x		x	x			x
453	Chief gunsmith	x		x	x			x
454	Gunsmith	x		x	x			x
456	Target house man	x			x		x	x

#### Power House

476	Boiler house fireman	x	x	x		x		
477	Stationary engineer	x	x	x	x	x	x	x
478	Tunnel maintenance man	x				x		
481	Boiler house maintenance man	x	x	x	x			

#### Building and Grounds Maintenance

500	Blacksmith	x	x			x		
502	Sign painter	x	x	x	x	x		x
504	Carpenters—class A	x	x	x	x	x	x	x
505	Carpenters—class B	x	x	x	x	x	x	x
506	Electrician—class A	x	x	x	x	x	x	x
507	Electrician—class C	x	x	x	x	x	x	x
509	Electrician—class B	x	x	x	x	x	x	x
510	Painter—class A	x	x	x	x	x		x
511	Painter—class B	x	x	x	x	x		x
512	Pipefitter and steamfitter—class A	x	x	x	x	x	x	x
513	Pipefitter and steamfitter—class B	x	x	x	x	x	x	x
514	Plumber—class A	x	x	x	x	x	x	x
515	Plumber—class B	x	x	x	x	x	x	x
518	Yardman	x	x	x	x	x	x	x
519	Power sweeper driver		x		x	x		x
520	Janitor and porter	x	x	x	x	x	x	x

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Occupational Code	Occupation Name	Physical Defect Code								
		1	2	3	4	5	6	7	8	9
Building and Grounds Maintenance (Continued)										
521	Matron .....	x	x	x	x	x	x	x	x	x
522	Matron supervisor .....	x	x	x	x	x	x	x	x	x
523	Instrument calibration men and radio technician .....	x	x	x	x	x	x	x	x	x
524	Instrument repair man and installation men .....	x	x	x	x	x	x	x	x	x
527	Cabinet maker .....	x	x	x	x	x	x	x	x	x
531	Maintenance foreman .....	x	x	x	x	x	x	x	x	x
533	Water treatment .....	x	x	x	x	x	x	x	x	x
537	Well pump operator .....	x	x	x	x	x	x	x	x	x
538	Air hammer operator .....	x	x	x	x	x	x	x	x	x
539	Compressor operator .....	x	x			x				
541	Road grader operator .....	x				x	x	x	x	x
547	Millwright—class A .....	x				x	x	x	x	x
548	Millwright—class B .....	x				x	x	x	x	x
549	Millwright—class C .....	x		x		x	x	x	x	x
550	Welders—class A .....	x	x			x	x	x	x	x
551	Welders—class B .....	x	x			x				x
552	Welders—class C .....	x	x			x				
553	Sheet metal worker—class A .....	x	x	x		x	x	x	x	x
554	Sheet metal worker—class B .....	x	x	x		x	x	x	x	x
555	Craft utility man .....	x	x	x		x	x	x	x	x
556	Porter and janitor foreman .....	x	x	x	x	x	x	x	x	x
558	Maintenance machinist—class B .....	x	x	x	x	x	x	x	x	x
559	Maintenance machinist—class C .....	x	x	x	x	x	x	x	x	x
560	Maintenance floor repair man .....	x	x			x	x	x	x	x
561	Foreman—building and grounds maintenance .....	x	x			x	x	x	x	x
562	Foreman—maintenance .....	x	x			x	x	x	x	x
563	Foreman—maintenance trades .....	x	x			x	x	x	x	x
564	Foreman—tunnel and boiler house maintenance .....	x	x			x	x	x	x	x

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Occupational  
Code

Occupation Name

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1 2 3 4 5 6 7 8 9

Miscellaneous—Continued

704	Clerk—receiving and shipping.....	x	x	x	x		x	x	x	x
705	Clerk—stock record and material stores .....	x	x	x	x	x	x	x	x	x
708	Medical examiner .....	x	x	x	x	x	x	x	x	x
709	Warehouse clerk .....	x	x	x	x	x	x	x	x	x
710	Clerk—tool .....	x		x	x	x	x	x	x	x
712	Crib foreman (tool crib) .....	x		x	x	x	x	x	x	x
713	Crib attendant .....	x		x	x	x	x	x	x	x
714	Driver—electric truck .....		x		x	x	x	x	x	x
715	Fire captain .....	x				x				
716	Fire lieutenant .....	x				x				
717	Fireman (fire protection) .....					x	x			
718	Furnace operator lead remelt.....	x	x			x	x			
719	Utility man — non productive — build- ing 110 .....	x		x	x		x			
719	Utility man—non productive .....	x	x	x	x	x	x	x	x	x
720	Guard .....	x				x				
721	Laborer, powder handling .....	x	x	x	x		x	x		
725	Instructor—training school .....	x	x		x	x	x	x	x	x
726	Instructor—training school (explo- sive) .....				x	x				
728	Material handler—building 110 .....	x		x	x		x	x	x	x
728	Material handler .....	x		x	x		x			
729	Chief oiler .....	x	x		x	x	x	x	x	x
730	Floorman manufacturing .....	x	x	x	x	x	x	x	x	x
731	Oiler .....	x	x		x	x	x	x	x	x

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Department  
Transportation Inspection

Bulletin  
Number 16-4  
Unit Safety  
Engineering  
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## Purpose

The purpose of this bulletin is to outline the procedure to be followed by the transportation inspection section of the safety engineering unit for insuring safe practices in the operation of transportation equipment.

## Inspection of Trucks

All transportation equipment, with the exception of trucks carrying explosives, will be inspected on a spot check basis by the transportation inspection section. If a traffic safety engineer finds any transportation equipment in a critically unsafe condition, he will direct the operator of the equipment to proceed immediately to the garage to have the condition remedied. If the unsafe condition is of no immediate danger, the traffic safety engineer will request the driver to have the condition corrected as soon as he completes his trip. In any case, the traffic safety engineer will use discretion in the exercise of his authority so that there will be no unnecessary interruption of transportation facilities.

## Trucks Carrying Explosives

Under the rules and regulations of the ordnance department and the Interstate Commerce Commission, all trucks carrying explosives must be inspected for safe operating conditions before every trip on the public highways, and a certificate of inspection (see below) signed by an authorized representative of the safety department must be on the truck at all times.

Company policy requires the daily inspection of trucks carrying explosives operating in the plant area. At the time of inspection, a "Motor Truck Inspection" (Form IRS-43—Rev. 3/42) will be filled out by the traffic safety engineer. On this card he will indicate that an inspection has been made of the following:

1. Brakes
2. Steering
3. Tires
4. Electrical wiring
5. Fuel tank and piping
6. Fire extinguisher
7. Lights
8. Horn
9. Windshield wiper
10. Red flags, when required on the truck
11. Cleanliness
12. Proper condition for handling explosives
13. Road flares (electric)

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The traffic safety engineer will sign the Form IRS-43 and place it in the holder in the cab of the truck.

### Convoying of TNT and PETN Shipments

In addition, it will be the duty of the transportation inspection section to convoy each shipment of TNT and PETN from the powder storage area to the plant site. Extreme care will be taken to keep all vehicles away from the truck.

### Manual for Operators of Explosive Trucks

Detailed company rules and regulations as well as rules of the Interstate Commerce Commission and the ordnance department regarding the transportation of explosives by truck are contained in the "Manual for Operators of Motor Vehicles Engaged in Transportation of Explosives." The transportation inspection section will see that all operators of trucks carrying explosives thoroughly understand the information contained in this manual.

### Authorization to Operate Outside Company Premises

Employees who are to operate transportation equipment outside company premises will require authorization from the ordnance department. Department heads may obtain this authorization for employees under their supervision by presenting a written request to the assistant general manager.

### Authorization to Operate Within Company Premises

Employees who are to operate transportation equipment within the plant will be examined and authorized by the transportation inspection section, and it will be the responsibility of each department head to see that all employees under his supervision who operate transportation equipment are properly authorized to do so. Arrangements for this authorization may be made by

communicating with the transportation inspection section of the safety department.

#### "Driver's Authorization Questionnaire"

When a prospective driver presents himself to the transportation inspection section for this authorization, he will be given a "Driver's Authorization Questionnaire." One of the traffic safety engineers then will subject the candidate to a road test which will be as nearly equal to actual driving conditions as possible.

#### Driver's Authorization Card

If the employee is approved by the transportation inspection section he will be issued a "Driver's Authorization Card." This card will show the employee's name and badge number, his driver's license number, his building and department number, and the type of vehicle or vehicles which he will be authorized to operate. The transportation inspection section will obtain a photograph of the employee from the employment service department, and will paste it on the reverse side of the card in the space provided. When properly filled out and signed by the employee and an authorized representative of the safety department, this card will authorize the employee to operate the transportation equipment indicated on the card within company premises.

#### Use of Form IRS-14

At the time of issuance of the "Driver's Authorization Card," a "Driver's Safe Operating Rules" (Form IRS-14) will be given to the employee in return for a receipt acknowledging that he has received this set of rules.

#### Investigation of Accidents

When an accident occurs involving transportation equipment, it will be investigated by one of the traffic safety engineers. Using the "Driver's Accident Report" (Form C-2223) prepared by the driver as a guide, the safety engineer will prepare a report on a "Safety Inspection Report" (Form IRS-5—Rev. 5/42).

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as outlined in Bulletin Number 16-1. When the accident involves injury to an employee, the traffic safety engineer will prepare, in addition to Form IRS-5, a "Report of Employee's Accident" (Form IRS-39—Rev. 2/43) as outlined in Bulletin Number 16-1.

### Forms Mentioned

The following forms are mentioned in this procedure:

- Form IRS-43 (Rev. 3/42) "Motor Truck Inspection"
- Form IRS-14 "Driver's Safe Operating Rules"
- Form IRS-5 (Rev. 5/42) "Safety Inspection Report"
- Form C-2223 "Driver's Accident Report"
- Form IRS-39 (Rev. 2/43) "Report of Employee's Accident"

### Bulletin Referred To

The following bulletin is referred to in this procedure:

Bulletin Number 16-1 "Accident Prevention and Reporting"

### Departments Affected

The following departments are affected by this procedure:

Safety Department

Employment Service Department

Production Control Department

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The United States Cartridge Co.  
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Department  
Fire Prevention and Protection

Bulletin  
Number 16-5  
Unit Fire  
Protection  
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### Purpose

The purpose of this bulletin is to outline the procedure to be followed by the fire protection unit in the prevention and investigation of fires.

### Definition of Titles

The title "safety engineer" as referred to in this bulletin will refer to those safety engineers assigned to the fire protection unit, and whose principal responsibility is fire prevention and protection. The title "general safety engineer" as used in this bulletin will refer to the general safety engineer in charge of fire protection.

### Fire Inspection at Plant Site

A regular fire inspection program will be carried out in every building on the plant site. There will be six safety engineers on duty at all times assigned as follows:

1. One to the primer inserting and loading buildings.
2. Four to designated areas in Plant 1 and Plant 2.
3. One to the basement of Buildings 204 and 205.

### Fire Inspection Schedule

A "Weekly Time Schedule" (Form IRS-36) will be prepared in duplicate each week by the fire protection unit. This form will show the plant area that has been

assigned to each safety engineer. The original copy of Form IRS-36 will be posted on the bulletin board in the fire house and the duplicate copy will be posted in the office of the general safety engineer.

### Points to Be Inspected

The safety engineers in the various fire inspection areas will pay particular attention to the following:

1. Inspection of fire extinguishers. These are sealed into the wall bracket with a red seal. If this seal has been broken, the safety engineer will inspect the extinguisher and its contents. If anything is out of order on the extinguisher or if it needs refilling, he will send it to the fire protection unit to be put back into working order.
2. Inspection of all alarm boxes and standpipe hose to see that they have not been tampered with.
3. Inspection of surroundings of standpipe hose, fire extinguishers, alarm boxes, and transformer vault doors to see that there are no obstructions that will hinder their use in case of an emergency.
4. Inspection of general housekeeping conditions.

In addition to the above points, the safety engineer assigned to the primer inserting and loading buildings will inspect all panic doors for proper operation and will inspect the straight line loading unit for the proper loading of hoppers. The safety engineer assigned to fire inspection in the manufacturing units also will check all fire doors to see that there is nothing to prevent them from closing with the exception of the fusible links.

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### Correction of Unsafe Conditions

When a safety engineer observes an unsafe condition or an unsafe act that presents no immediate danger, he will call it to the attention of the foreman and will enter such infraction or condition on the "Report of Employee Violations of Safety Regulations" (Form IRS-25) which will be turned into the fire protection office at the end of the shift. Form IRS-25 will be prepared and distributed as outlined in Bulletin Number 16-1.

### Correction of Hazardous Condition

When a safety engineer discovers a situation which he considers an extremely hazardous condition, he is authorized to take immediate direct action to eliminate the hazard. Any unsafe condition in the restricted area will fall under this category. The safety engineer will use discretion in the exercise of his authority so that there will be no unnecessary interruption of production. A report of the circumstances and action taken will be made to the foreman or supervisor in charge.

### Hourly Report

On a pre-arranged basis, all safety engineers will phone the office of the general safety engineer once every hour during the shift. At this time the safety engineer will report any unusual occurrences on his shift and the office will inform the safety engineer of any fires in his area that he should investigate.

### Daily Log

Each safety engineer will turn in to the office of the general safety engineer a daily log of his activities.

This report will be submitted in original only on a "Safety Inspection Report" (Form IRS-5—Rev. 5/42).

### Inspection of Fire Hydrants

Every three months, the general safety engineer and a qualified representative of the plant engineering department will inspect every fire hydrant on the premises. This inspection will consist of actually testing the operation of each hydrant and checking for proper drainage and condition of the threads. A report of this inspection will be prepared in duplicate. The original will be sent to the chief safety engineer and the duplicate will be retained by the fire protection unit.

### Use of Form IRS-21

A "Fire Protection Equipment Location" (Form IRS-21) will be prepared for each fire extinguisher in the plant, showing its exact location, the serial number, type, and size. Forms IRS-21 will be filed by building number. Every time a fire extinguisher is used or refilled, this information will be noted on the card for that extinguisher.

### Extinguisher Refills for McQuay-Norris Company

Under an arrangement with the McQuay-Norris Manufacturing Company and the Ordnance Department, the fire protection unit will refill extinguishers brought to them by the McQuay-Norris Manufacturing Company. A complete record of such services will be kept and submitted to the general accounting department as outlined in Bulletin Number 51-39.

### Fire Alarm System

Each building will be divided into several sections from the standpoint of fire protection and each section will contain several alarm boxes connected to a master alarm box outside the building. When an alarm is given it will sound an audible signal and record a

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coded location signal on a ticker tape in the dispatcher's office at the fire house. The signal recorded on the tape will be translated by the dispatcher to show the location of the fire.

### Supervision of Fire Fighting

The general safety engineer will assume full charge of all fire fighting equipment and personnel. The sounding of an alarm will call into action Number 1 and Number 2 fire apparatus and the firemen assigned to that equipment. If a second alarm is given either for the same fire or for a different fire, the firemen left stationed in the fire house will proceed with the Number 3 fire apparatus. The chief safety engineer, the director of the medical department, or the plant protection chief will issue the order to call in outside facilities if necessary. This order must be given through the plant protection division, which will in turn call the required facilities (see Bulletin Number 1-7).

### Protection Division Function

Safety engineers will be responsible for the closing of fire doors and for supervising the evacuation of personnel. In both of these functions, the safety engineers will be assisted by the plant guards. If additional guards are necessary, the general safety engineer or the chief safety engineer will notify the plant protection division which will send the required guards. Regular guard duty will be intensified rather than relaxed since the fire may be to divert attention to permit more sabotage and destruction.

## Investigating and Reporting of Fires

As soon as the fire is brought under control, the safety engineer on duty in the building where the fire occurred will begin an investigation of the fire. Regardless of the size or the extent of the damage, the safety engineer will prepare in original only for each fire a "Detailed Fire Investigation Report" (Form IRS-3-A). This report will show the following information:

1. Location, date, and time of fire.
2. The number of the alarm box and the name and badge number of the person turning in the alarm.
3. Detailed location of the fire by department and machine number.
4. The name and badge number of the operator and his foreman.
5. Cause of the fire.
6. Class of fire (see explanation below).
7. Extinguishing agencies.
8. Extent of damage.
9. Injuries.
10. Remarks.

[fol. 1188]

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## Class of Fire

All fires will be classed as one of the following:

- Class A—Ordinary combustible materials.
- Class B—Highly combustible materials.
- Class C—Electrical equipment.
- Class X—Explosives.

## Typing of Form IRS-3-A

The Forms IRS-3-A prepared by the safety engineers will be sent to the office of the general safety engineer. Using the information on Form IRS-3-A, the clerk in this office will type a report, in letter form on a "Fire Investigation Report" (Form IRS-3—Rev. 4/42). This report will be typed twice in four copies giving a total of two originals and six carbon copies.

## Distribution of Form IRS-3

The eight copies of Form IRS-3 will be distributed as follows:

Original—Sent to the general superintendent.

Duplicate—Sent to the assistant general superintendent.

Triplicate—Sent to the plant protection chief.

Fourth Copy—Retained by the office of the general safety engineer.

Original—Sent to the Director of Personnel.

Duplicate—Sent to the superintendent of the manufacturing department.

Triplicate—Sent to the superintendent or department head responsible for the area in which the fire occurred.

Fourth Copy—Sent to the chief safety engineer.

### Recap of Fire Investigation Report

Using the fourth copies of Forms IRS-3 which have accumulated during the week, the clerk in the office of the general safety engineer will prepare a recap each week which will list for each fire:

1. Location
2. Date
3. Injuries
4. Cause
5. Class of fire
6. Whether or not the fire department responded

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This weekly report will be typed twice, once in four copies and once in three copies, giving a total of two originals and five carbon copies.

### Distribution of Weekly Report

The seven copies of the weekly report will be distributed as follows:

Original—Sent to the general superintendent

Duplicate—Sent to the assistant general superintendent

TriPLICATE—Sent to the plant protection chief

Fourth Copy—Retained by the office of the general safety engineer

Original—Sent to the Director of Personnel

Duplicate—Sent to the superintendent of the manufacturing department

TriPLICATE—Sent to the chief safety engineer

### Monthly Fire Analysis

Each month the office of the general safety engineer will prepare in four copies a "Monthly Fire Analysis" (Form IRS-24). This report will be prepared from and will show the same information listed on the weekly reports and will list every fire that has occurred in the previous month. The duplicate copy of Form IRS-24 will be placed in a fire register book in the office of the general safety engineer and the remaining copies will be sent to the Ordnance Department.

## Ambulance Calls

When a call for an ambulance is received in the fire house, the dispatcher will send an ambulance to the proper location and then will record on the "Ambulance Assignment" (Form IRS-26—Rev. 1/43) the following information:

1. Vehicle number
2. Date
3. Destination of ambulance
4. Name and badge number of person who called the ambulance
5. Name, badge number, and department number of the patient
6. Time ambulance left

## Completion of Form IRS-26

When the ambulance driver returns from a trip, the dispatcher will enter the time returned and then give the driver the Form IRS-26 to enter the following information:

1. The place to which the patient was taken

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2. The mileage of the trip
3. The driver's signature and badge number

Form IRS-26 then will be filed in the office of the general safety engineer:

#### Report on Ambulance Calls

At the end of each three month period the general safety engineer will send a letter to the chief safety engineer and to the head of the medical department showing the number of ambulance calls for that period.

#### Forms Discussed

The following forms are mentioned in this procedure:

Form IRS-36 "Weekly Time Schedule"

Form IRS-25 "Report of Employee Violations of Safety Regulations"

Form IRS-5 (Rev. 5/42) "Safety Inspection Report"

Form IRS-21 "Fire Protection Equipment Location"

Form IRS-3-A "Detailed Fire Inspection Report"

Form IRS-24 "Monthly Analysis"

Form IRS-26 (Rev. 1/43) "Ambulance Assignment"

Form IRS-3 (Rev. 4/42) "Fire Investigation Report"

### Bulletins Referred to:

The following bulletins are referred to in this procedure:

Bulletin Number 16-1 "Accident Prevention and Reporting"

Bulletin Number 1-7 "Disaster Procedure"

Bulletin Number 51-39 "Accounting for Supplies and Services Furnished Other Companies"

### Departments Affected

The following departments are affected by this procedure:

Safety Department

Medical Department

Plant Protection Department

Manufacturing Department

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Restricted Areas

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Number 16-7  
Unit Safety  
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## Purpose

The purpose of this bulletin is to outline the procedure to be followed by the restricted areas section of the safety department in the prevention of accidents and unsafe working conditions in the restricted areas and in Buildings 117, 123, 134, 234, 228A and 228B.

## Inspection Function

It will be the responsibility of the safety engineers assigned to the restricted areas to carry on a regularly scheduled inspection and to give constant safety supervision to the preparation, transportation, drying and charging of all explosive chemicals in the manufacture of tracer, primer, and igniter mixes. Safety engineers also will keep constant check on all buildings containing explosives (PETN, TNT, Primer Mix, Tracer Mix, and Finished Primers) to prevent any overloading or exceeding of personnel limits which have been established by the ordnance department, the safety department, and the management. These limits are contained in the Standard Manufacturing Practice Manual. There also will be a sign in a prominent location in each building which will state the explosive and personnel limits. It will be the responsibility of the safety engineer to see that these signs are kept up to date and repainted whenever necessary by the painter assigned to the area.

## Correction of Unsafe Conditions

If a safety engineer should discover that the established limits for handling, transporting, or storing are exceeded, he will contact the supervisor concerned (either the assistant general inspector of the chemical

inspection section or the superintendent of the chemical units) and request that the amount of the overload be removed. The safety engineer will remain on hand to see that the proper amount of material is removed.

### Transportation Handling

The safety engineers will give safety supervision to the loading and unloading of all movable equipment within the restricted areas. In this capacity they will make certain that safe practices in the handling of explosive chemicals are followed. In addition, the safety engineers will check all movable equipment to see that it is in a safe operating condition.

### Safety Regulations for Personnel

Safety engineers will check all employees in the restricted areas for strict compliance with all safety regulations. These regulations will include the wearing of safety glasses, conductive sole shoes, wearing of safety apparel as furnished by the company, and in the case of certain operations in the manufacture of tracer mix and primer mix, the use of respiratory equipment provided. Safety engineers will report any infraction of safety regulations on a "Report of Violations of Safety Regulations" (Form IRS-25—Rev. 2/43) as outlined in Bulletin Number 16-1.

### Reporting of Accidents

Safety engineers assigned to the restricted areas will investigate and report any accident occurring in these areas. Accident reports will be prepared on a "Report of Employee's Accident" (Form IRS-39-A—Rev. 2/43) as outlined in Bulletin Number 16-1. If the accident involves lost time or if it is the opinion of the supervising safety engineer that an additional report is required, the safety engineer will prepare a more detailed report on a "Safety Inspection Report" (Form IRS-5—Rev. 5/42) as outlined in Bulletin Number 16-1.

[fol. 1192]

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### Checking of Maintenance Work

When maintenance crews are to perform work in the restricted area, they will be issued a "Restricted Area Pass" (Form IRPP-11—Rev. 4/43) as outlined in Bulletin Number 5-7. If the work is to be done in or around buildings in operation or in any building where explosives have been handled, it will be necessary for the safety engineer to check the area to see that it is clear of explosives and to check the equipment and methods by which the work is to be done to insure that safe practices will be followed. After performing this check the safety engineer will sign Form IRPP-11 in the space provided and the maintenance crew will be allowed to proceed with the work to be done. The plant engineering coordinator also must approve Form IRPP-11 for maintenance work and it will be his responsibility to see that the safety engineer gives the necessary approval when required.

### Daily Log

Each safety engineer will prepare a daily log of his activities and submit it to his supervising safety engineer at the end of the shift. This daily log will be prepared on Form IRS-5 which also will be used to submit any special report required.

### Forms Mentioned

The following forms are mentioned in this procedure:

Form IRS-25 (Rev. 2/43) "Report of Violations of Safety Regulations"

Form IRS-39-A (Rev. 2/43) "Report of Employee's Accident"

Form IRS-5 (Rev. 5/42) "Safety Inspection Report"

Form IRPP-11 (Rev. 4/43) "Restricted Area Pass".

#### Bulletins Referred To

The following bulletins are referred to in this procedure:

Bulletin Number 16-1 "Accident Prevention and Reporting"

Bulletin Number 5-7 "Restricted Area Passes."

#### Departments Affected

The following departments are affected by this procedure:

Safety Department

Production Department

Inspection Department

Plant Maintenance Department

[fol. 1193]

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                                    Powder Storage Area

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### Purpose

The purpose of this bulletin is to outline the procedure to be followed by the powder storage area section of the safety department in the prevention of accidents and the correction of unsafe conditions at the powder farm.

### Storage Inspection

Safety engineers assigned to this function will carry on a constant inspection of buildings, grounds, powder storage igloos, equipment, explosive handling operations, and maintenance operations in the area for the purpose of correcting or eliminating hazardous conditions or unsafe equipment and practices. In the inspection of the storage igloos, the safety engineer will check to see that the load limits, personnel limits, and temperature limits are not exceeded and that the structure is kept in a safe condition. When a safety engineer finds that any of the established limits are exceeded, he will contact the foreman of the powder handlers and request that the situation be corrected. If the foreman is not available, the safety engineer will take action to have it corrected and then report such action to the foreman.

### Transportation

Safety engineers assigned to the powder storage area section will inspect all explosive trucks before they are loaded to see that they have been cleaned out, and will check the loading of the trucks to see that the established limits are not exceeded. Plant guards

on duty at the gate will check each truck to see that it has a "Motor Truck Inspection" (Form IRS-43 Rev. 3/42) signed by a safety engineer of the transportation inspection section, as outlined in Bulletin Number 16-4. If the Form IRS-43 is not present, the guard will notify the safety engineer who will make the required inspection, prepare and sign a Form IRS-43, and place it in the cab of the truck. In addition to the inspection of trucks, the safety engineers will inspect all material handling equipment to see that it is kept in safe condition and to prevent overloading and unsafe practices.

### Safety Regulations

The safety engineers will watch for infractions of safety regulations by employees at the powder farm. These infractions will include the following:

1. Failure to wear powder shoes or safety glasses in the powder igloos.
2. Smoking on the premises except at specified times in the area designated.
3. Failure of maintenance crews to use proper safety equipment when making repairs.

When a safety engineer observes infractions of the above rules, he will not contact the employee but he will make a report of the infraction on a "Report of Employee Violations of Safety Regulations" (Form IRS-25 Rev. 3/43) as outlined in Bulletin Number 16-1.

### Explosive Scrap Disposal

Certain types of explosive scrap which cannot be disposed of safely or effectively at the burning grounds will be taken to the powder farm to be burned, buried, or otherwise disposed of, depending upon the type of scrap. The safety engineer assigned to this area will check these operations to see that they are carried out in accordance with safety regulations.

[fol. 1194]

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### Firing Ranges

The safety engineers will have full responsibility for clearing the firing range of personnel and for seeing that all gates to the range are closed and guarded before firing begins. Firing will not commence until a safety engineer gives notice that the range is cleared, and the firing will conform to accepted safe practices as determined by the safety department. In addition, the buttresses into which the bullets are fired will be inspected before each firing to make certain that there are no obstructions that might cause the bullets to ricochet.

### Investigation of Accidents

The safety engineers assigned to this section will investigate and report all accidents at the powder farm. A report will be prepared on a "Report of Employee's Accident" (Form IRS-39 Rev. 3/43) as outlined in Bulletin Number 16-1. When the accident involves more than first aid treatment a special report will be made by the safety engineer on a "Safety Inspection Report" (Form IRS-5 Rev. 5/42).

### Daily Log

Each safety engineer will submit a daily log of his activities to the supervising safety engineer on a Form IRS-5. Form IRS-5 will also be used to submit reports of unusual occurrences which warrant special attention.

## Forms Mentioned

The following forms are mentioned in this procedure:

**Form IRS-43 (Rev. 3/42) "Motor Truck Inspection"**

**Form IRS-25 (Rev. 2/43) "Report of Employee Violations of Safety Rules"**

**Form IRS-39 (Rev. 2/43) "Report of Employee's Accident"**

**Form IRS-5 (Rev. 5/42) "Safety Inspection Report"**

## Bulletins [Referred] to

The following bulletins are referred to in this procedure:

**Bulletin Number 16-4 "Transportation Inspection"**

**Bulletin Number 16-1 "Accident Prevention and Reporting"**

## Departments Affected

The following departments are affected by this procedure:

**Safety Department**

**Production Control Department**

**Plant Protection Division**

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Number 16-9  
Unit Work Orders  
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### Purpose

The purpose of this bulletin is to outline the procedure to be followed by the powder disposal section of the safety department in the collection and disposal of explosive scrap material.

### Collection of Explosive Scrap

There will be a regularly scheduled program for explosive scrap collection which will be carried out on a 24 hour—7 day basis. Four specially constructed trucks assigned to the powder disposal section will be used for this purpose. There will be a collection every two hours from the restricted areas and the primer and loading buildings, and a collection twice daily from the manufacturing units. Rejected primed cartridge cases will be collected only on the first shift since the disposal of this item must have the approval of the unit superintendent. (See below).

### Identification of Scrap Containers

Explosive material which has been finally scrapped will be forwarded to the nearest area designated for scrap collection. The inspector will prepare in original only a "Scrap Disposal Tag" (Form IRS-17—Rev. 5/42) for each container of explosive scrap. Form IRS-17 will show the date, building number, and type of scrap. The inspector will sign Form IRS-17 and have it approved as follows:

Rejected cartridge cases—Unit superintendent

All other explosive scrap—Unit superintendent or  
assistant in charge of shift

## Daily Pick-up Log Sheets

The pick-up men will collect only scrap that is in the proper container and has a properly approved Form IRS-17 attached. A "Daily Pick-up Log Sheet" (Form IRS-46—Rev. 7/42) will be kept in each truck. The driver's helper will enter on Form IRS-46 the amount and kind of scrap obtained from each building on each collection trip. Form IRS-46 will be turned in to the office of the supervising safety engineer at the burning grounds at the end of each shift.

## Use of Form IRS-9

In order that a record be available of the total weight of cartridge cases collected from each building during each 24 hours, the clerk in the office of the supervising safety engineer will recap the information regarding cases as shown on Forms IRS-46 turned in by the drivers, and post the building totals to the "Daily Serap Pickup Record" (Form IRS-9). Form IRS-9 will show daily collections of cartridge cases for each building for a period of one month.

## Use of Form IRS-10

Each day the clerk in the office of the supervising safety engineer will make a recap of the total amount of each kind of scrap collected from all buildings. The results of this recap will be posted on "Burning Grounds Serap Disposal Recap" (Form IRS-10).

## Disposal of Scrap

When explosive scrap is brought to the burning grounds, it will be placed in a proper storage house to be stored until it can be burned. The methods used for disposal of various types of scrap will be as follows:

1. All rejected primed cases will be passed through a gas-fired rotary Rockwell furnace which will eliminate the live charge in the primers. "Popped" cases then will be passed through a pickle and wash operation so they can be disposed of as reclaimed scrap.

[fol. 1196]

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2. All rejected tracer charge jackets will be passed through tracer furnaces where they will be burned free of the tracer mix so the metal can be disposed of as reclaimed scrap.
3. Rejected primers, loose powder, tracer mix, igniter mix, primer mix, magnesium, sump cleanings, and all other component chemicals used in the plant will be disposed of in burning kettles which are gas-fired and are remotely fed via chutes from the charging room.
4. Mercury scrap will be collected twice during each shift from the various metallurgy units and will be broken down at the burning grounds. The powder will be destroyed in the burning kettles, the tracer jackets will be burned in the tracer furnace; and the cases will be placed in burlap bags to be taken by the transportation sub-section to the powder storage area where they will be stored for shipment.

#### Disposal of Form IRS-17

When scrap is received at the burning grounds and routed to the proper furnace, Form IRS-17 will be removed from the container and turned in to the supervising safety engineer's office where it will be filed by building and by date. Form IRS-17 will be kept for a period of 30 days and then destroyed.

#### Record of Disposal

At the time the material is disposed of, the employee in charge of burning the scrap will prepare in original only a "Scrap Record" (Form IRS-23) which will

show the date and the quantity of each type of explosive scrap material that is burned. This form will be turned in to the office of the supervising safety engineer where it will be checked against Form IRS-10 to see that the amounts collected and the amounts disposed of are in agreement. Form IRS-23 then will be filed by date.

### Weekly Report

From Form IRS-10, a weekly report will be prepared by the supervising safety engineer on which will be listed the number of pounds of each item handled and the number of bucket containers collected during the month. This weekly report will be prepared in triplicate and will be distributed as follows:

Original—To the chief safety engineer

Duplicate—To the factory accounting department

TriPLICATE—Retained as a file copy

### Cleaning of Drop Test Machines

The powder disposal section will have the responsibility of cleaning daily the reservoir in the exhaust pipe of each drop test machine, keeping it free from explosive accumulations. This section also will clean the walls, floors, and windows of all recanning rooms, keeping them free from accumulated powder and dust.

### Forms Mentioned

The following forms are mentioned in this procedure:

Form IRS-17 (Rev. 5/42) "Scrap Disposal Tag"

[fol. 1197]

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Form IRS-46 (Rev. 7/42) "Daily Pick-up Log Sheet"

Form IRS-9 "Daily Scrap Pick-up Record"

Form IRS-10 "Burning Grounds Scrap Disposal Recap"

Form IRS-23 "Scrap Record"

#### Departments Affected

The following departments are affected by this procedure:

Safety Department

Factory Accounting Department

Manufacturing Department

Transportation Department

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                                    Department  
                                    Classification of Items Handled

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 Unit Safety  
 Stores  
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### Purpose

The purpose of this bulletin is to list the items handled by the safety stores unit, the stock numbers assigned these items for the purpose of stock and accounting records and the method of determining items to be handled.

### Control of Items

The safety department with the approval of the management will determine:

1. The items to be carried and the quantities to be stocked.
2. The items to be sold to employees, those to be issued to employees without charge, and those to be issued to certain occupational groups and sold to others.

### Type of Items to Be Stocked

The safety stores will stock certain types of wearing apparel to be worn by employees during working hours and approved types of safety equipment considered necessary to the safety of employees in certain types of work.

### Stock Numbers

Each item carried in stock by safety stores will be assigned a stock number. This stock number will be shown on all transactions affecting such items.

## Safety Stores Codes

Each item carried in stock also will be assigned a code letter, A, B, or C, which will designate:

- A. Items to be issued without charge
- B. Items to be sold only
- C. Items to be sold or issued according to occupational classification

## Items Carried in Stock

Following is a list of items carried in stock, showing the stock number, code letter and description:

Stock No.	Code	Description
<b>Goggles and Helmets</b>		
1001	A	#7828 acetate frames
1002	B	Prescription lenses
1003	A	Acetate safety goggles—complete
1004	A	Safety goggle lenses
1005	A	Leather goggle cases
1006	A	Welders' cover goggles—#5 lense
1007	A	Welders' eye cup goggles—#5 lense

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Date  
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Stock No.	Code	Description
1008	A	Welders' cover glass, 50 M. M. (round)
1009	A	Welders' helmets
1010	A	#10 glass plates for welders' helmets
1011	A	#7828 Calobar safety goggles
1012	A	6" acid face shields
1013	A	Super armorplate coverglass goggles
1014	A	Steel rim goggles (machinists)
1015	A	Clear cover glass plates 2 x 4 $\frac{1}{4}$ (oblong) welders helmets
1016	A	Cover goggle of clear lense
1017	A	Metal goggle case
1018	A	Goggle cases for cover goggles
1019	A	Cover glass plates (coated) oblong, welders helmets
1020	C	Sweat bands
1021	A	#5 welders goggle lenses (round) shaded for repairing goggles
1022	A	Slip-on-goggles
1023	A	Calobar lenses
1024	A	Frames F-3144-44

#### Gloves, Sleeves, and Aprons

2001	C	Cotton gloves
2004	A	All leather welders' gauntlets
2005	A	All leather welders' gauntlets with flaps
2005	A	All leather welders' gauntlets with flaps on right hand only
2007	A	All leather gauntlets with canvas cuff— heavy weight
2008	A	#615 W A black rubber linesman's gloves
2009	A	Horsehide cover gloves—linesman's

[fol. 1200]

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Stock No.	Code	Description
2010	A	#644 studded gloves—scrap handlers
2012	A	Ax rubber gloves—acid handlers
2013	A	#13868 welders' sleeves with bib
2014	A	Leather bib-type aprons #148, 24 x 36
2015	A	Rubber bib-type aprons
2019	A	Wrist protectors—6" sleeve guards—studded leather
2020	A	#1102 chrome leather hand pads (scrap handlers')
2021	A	Asbestos gloves—lined—#200
2022	A	8" canvas wrist protectors
2023	A	18" canvas wrist protectors
2024	B	Goatskin gloves (cash only)
2025	A	Asbestos aprons #138
2026	A	Leather gauntlet with canvas cuff (light-weight) sewed fingers
2027	A	Stanzoil rubber gloves

#### Shoes, Boots and Puttees

3002	B	701-1 black calf safety Oxford
3003	B	702 black kangaroo Oxford
3004	B	706-1 black glove Neoprene sole Oxford
3005	B	721 black glove leather sole high shoe
3006	B	724 black glove electrician rubber sole high shoe
3007	B	725 retan Neoprene sole high shoe
3008	B	729 Rosite cord sole high shoe
3009	B	730-48 black calf police shoe (guards)
3010	B	741-1 tan calf safety Oxford

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Stock No.	Code	Description
3011	B	741-10 tan calf conductor sole Oxford
3012	B	751 8" tan calf high cut shoe
3013	B	755 8" Rosite high cut shoe
3014	B	6270½ black calf puttee shoe (guards) powder farm
3015	A	Rigidum Sandey toe guards
3017	A	MB-802 short legging boots
3018	A	USMB-956 legging boots
3019	A	Hood Lectro safety toe boots (Fire Dept.)
3020	A	F-509½ spring puttees black leather (powder farm)
3022	B	Shoe strings, 30"
3023	B	Shoe strings, 45"
3024	B	741-10 tan calf conductor sole Oxford EEE
3026	A	¾ rubber boots—Storm King
3027	B	H705-2 shoe cord sole high shoe
3030	B	Arch-o-graphs
3031	B	704-2 black cord sole Oxford
3032	B	741 X 10½ tan calf conductive sole ventilated Oxford
3033	B	741-1½ tan calf ventilated Oxford leather sole
3034	B	730-2 black calf guard high shoe—wire nails
3035	B	X701 black calf safety Oxford—EEE
3036	A	Fruco Hi Top rubber boots ¾
3037	A	Fruco hip boots
3038	A	Fruco knee boots
3039		Fruco black raincoat, slicker, new or used Fruco black raincoat, slicker, new or used (with hat)

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Stock No.	Code	Description
3040		Fruco slicker hat
3041		Rubber hip boots
3501	B	700-2 glove conductor sole Oxford
3502	B	700-3 glove safety shoe
3503	B	700-5 kid conductor sole Oxford
3504	B	2040-2 ladies' safety shoe
3505	B	H900 rope sole shoe
3506	B	H700X11 ladies' powder shoe
3507	B	H700X14 ladies' powder shoe brown Oxford
3508	B	607 white rope sole shoes (nurses)
3509	B	Leather insoles 4 x 8
3510	B	700X12 leather tan calf Oxford—leather sole
3514	B	700X33 tan conductive sole safety Oxford
3515	B	700X43 tan leather sole safety Oxford
3516	B	700X34 moccasin with cord sole

#### Uniforms and Accessories—Men

4001	C	Guard shirts (replacements sold)
4002	C	Guard pants         "         "
4003	C	Guard breeches         "         "
4004	C	Guard coats (blouse) replacements sold
4005	C	Guard ties         "         "
4006	C	Guard caps         "         "
4007	A	Sam Browne belts
4008	A	#12 cartridge holders, black
4009	A	FH-21 holsters—6" barrel
4010	A	Police whistles

[fol. 1203]

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Stock No.	Code	Description
3039		Fruco black raincoat, slicker, new or used
		Fruco black raincoat, slicker, new or used (with hat)
3040		Fruco slicker hat
3041		Rubber hip boots
3501	B	700-2 glove conductor sole Oxford
3502	B	700-3 glove safety shoe
3503	B	700-5 kid conductor sole Oxford
3504	B	2040-2 ladies' safety shoe
3505	B	H900 rope sole shoe
3506	B	H700X11 ladies' powder shoe
3507	B	H700X14 ladies' powder shoe brown Oxford
3508	B	607 white rope sole shoe (nurses)
3509	B	Leather insoles 4 x 8
3510	B	700X12 leather tan calf Oxford—leather sole
3514	B	700X33 tan conductive sole safety Oxford
3515	B	700X43 tan leather sole safety Oxford
3516	B	700X34 moccasin with cord sole

#### Uniforms and Accessories—Men

4001	C	Guard shirts
4002	C	Guard pants
4003	C	Guard breeches
4004	C	Guard coats (blouse)
4005	C	Guard ties
4006	C	Guard caps
4007	A	Sam Browne belts
4008	A	#12 cartridge holders, black

[fol. 1204]

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Stock No.	Code	Description
4011	A	Reefer coats
4012	A	#107 yellow slicker coats
4014	A	White shirts
4015	A	White pants
4016	A	White shorts
4017	A	White athletic shirts
4018	A	White socks
4019	A	White caps
4020	A	Suntan shirts (short sleeve)
4021	A	Suntan pants (no pockets)
4022	C	Safety shirts
4023	C	Safety pants
4024	A	Jackets—all colors
4025	A	Short sleeve undershirts
4026	A	Ankle length underdrawers
4027	A	Black raincoats & hats
4028	A	Coveralls—men's suntan, long sleeve (with hats)
4029	A	Suntan shirts — long sleeve — herringbone stripe
4030	A	Suntan pants with pockets — herringbone stripe
4031	A	Rubber cover for guard caps
4032	A	Towels
4033	C	Suntan shirts (twill—low grade) Pacemaker
4034	C	Suntan pants " " " "
4035	B	Suntan coverall (short sleeves—lightweight)
4036	A	Hangar straps (for belts—guards)
4037	A	White trousers with pockets & cuffs

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<b>Stock No.</b>	<b>Code</b>	<b>Description</b>
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4038 A. Sweat shirts

## **Women's Uniforms**

**4501 C - Women's coverall suits and caps**

## **Respirators—Gas Masks—Filters**

5001 A CR#10373 Comfo chemical respirators

5002 A #10099 GMC cartridges for Comfo chemical  
respirators

### 5003 A Metal fumes respirators

5004 A Metal fumes filters

### **5005 A Dust respirators—Dustfoe**

## 5006 A Dust filters for Dustfoe respirators (oblong filters)

#### 5007 A All service gas masks

#### **5008 A Self-contained gas masks**

5009 A Comfo dust filters used on Comfo dust respirators

#### 5010 A. Comfo dust respirators

5013 A All service [permissible] [cannisters] gas masks

5014 Mersorb cartridge for chemical respirator

## Miscellaneous

6001 A Ear Defenders—HA-15369 17227 17225

"600? B Hair nets.

6004 A 2 cell Eveready handlight

**6004 A** Seen already  
**6007 A** Stretcher outfit

6007 A Streicher outlines  
6008 A EA 2348 stretcher

6008 A FA-2348 stretcher  
6009 A Galvanized canisters FA 2346

6009 A Galvanized canisters—FA23  
6910 A Fine wool blankets—FA50004

6010 A Fire wool blankets—FA50094  
6011 A FA10237 fire blankets and cases

6911 A FA10221 file 6  
6913 A Asbestos suits

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Stock No.	Code	Description
6019	A	Fire extinguishers
6025	A	Foilé medicated spray, complete
6028	A	2 cell flashlights—Bright Star
6030	A	Duro safety ladder shoes
6032	A	3 cell flashlight—Bright Star

#### Department Expense and Items

3021	A	Pinch pads
3025	B	Heel lifts pads—felt
3028	B	Heel grip liners
3029	B	Leather insoles
5011	A	Elastic bands for Dustfoe dust respirators
5012	A	Elastic bands for Comfo chemical respira-tors
6005	A	Handlight batteries
6005	A	First aid kits—complete—FA12259
6020	A	Fire extinguishers refills
6026	A	Cellulose sponges—large
6029	A	Cellulose sponges—small
6033	A	Conductive rubber clogs
6021	A	Cigar lighter elements

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		Sale of Safety Equipment	

### Purpose

The purpose of this bulletin is to outline the procedure to be followed in the sale of safety equipment by the safety stores section.

### Sales to Employees

Sales of safety equipment to employees will be made either through payroll deductions or for cash. All payroll deduction and cash sales of \$1.00 or more will be recorded on an "Employee's Sales Ticket" (Form IRS-1—Rev. 2/43) controlled by autographic registers.

### Payroll Deductions for Single Sales

When sales made to employees are to be paid for through payroll deductions, a separate Form IRS-1 will be prepared for each weekly payroll deduction. Each sale under \$5.00 will be deducted in total from the employee's pay check for the current payroll period, providing the sale is not made later than eight o'clock Saturday morning. If the total cost is in excess of \$5.00, an employee may elect to have the entire amount deducted from one pay check or he may request that the deduction be made in amounts of approximately \$5.00 from each successive payroll period. If more than one payroll deduction is to be made covering a single sale, only the first Form IRS-1 prepared will show the quantity and the code number of the item sold. The total amount of the sale along with the serial numbers of each related Form IRS-2 pertaining thereto must be indicated in the open space next to the payroll deduction date.

## Payroll Deductions for the Sale of Two Items

In case two items are purchased at one time they can be recorded on one sales ticket if they are to be deducted in one payroll period. However, if the employee elects and is allowed (due to the \$5.00 limit) to deduct the sale from more than one pay period, each item can be recorded on a separate Form IRS-1 and scheduled to be deducted on different pay periods.

### Preparation of Form IRS-1

The following information will be shown on Form IRS-1:

1. Date
2. Description, size and stock number
3. Amount to be deducted
4. The date ending the payroll period from which the deduction is to be made
5. Building, department and badge number of employee
6. Location of the store—Building 204 or Tyson —will be shown in the space "Store Room No."
7. Sales tax.

All Forms IRS-1 involving payroll deductions will be signed by the employee and by the safety store clerk preparing the form.

### Entering Amounts

The "Amount" column on all Forms IRS-1 will show only the amount to be deducted from the pay check for the payroll period indicated regardless of the total amount of the sale. The amount shown on

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Form IRS-1 will include that portion of the sales tax which applies to the amount being deducted from the payroll in question.

### Preparation of Form IRS-20—Payroll Deductions

At the end of each shift a "Register Recapitulation" (Form IRS-52) will be prepared for each cash register by the outgoing clerks who will sign it in the space provided. The incoming clerks will verify and accept the responsibility for the information shown thereon by signing the Form IRS-52. At the end of each day an "Autographic Register Report" (Form IRS-20—Rev. 3/43) will be prepared in three copies to transmit the Forms IRS-1 to the payroll department. Form IRS-20 will show the following information:

1. Check (✓) in the square indicating "Payroll"
2. Stores location
3. Date
4. Shift
5. Serial number of Forms IRS-1 attached. In case a series of unbroken serial numbers are to be transmitted, the beginning and ending serial numbers of each unbroken series will be shown.
6. Certification by the income sales clerk that the last serial numbers shown are correct.

### Distribution of Form IRS-1—Payroll Deductions

Form IRS-1 prepared for payroll deductions will be distributed as follows:

Original—Routed to the payroll department with the original and duplicate copy of Form IRS-20. The payroll department will check the Forms IRS-1 transmitted against those recorded on Form IRS-20 and, if correct, will sign the duplicate copy of Form IRS-20 in the space provided. The duplicate copy of Form IRS-20 then will be returned to the safety stores section. The original copies of Form IRS-1 and Form IRS-20 will be retained by the payroll department where they will be handled as discussed in Bulletin Number 53-6.

Duplicate—Given to the employee making the purchase.

Triplicate—Routed to the general accounting department with the triplicate copy of Form IRS-20 to be handled as discussed in Bulletin Number 51-37.

Fourth Copy—Sent to the safety control office and filed by badge number.

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**Fifth Copy**—Used by the general accounting representative in the safety stores section to ascertain that all Forms IRS-1 are accounted for. When a series has been completed, these copies will be forwarded to the general accounting department.

#### Preparation of Form IRS-1—Cash Sales

Form IRS-1 covering cash sales will be marked "Paid in Full" and will be received by a safety stores clerk. Employees purchasing items for cash will not sign Form IRS-1. Two items, when sold to the same employee, will be recorded on a single Form IRS-1 as in the case of payroll deductions. A Form IRS-1 will not be prepared for cash sales of less than \$1.00. Such sales will be rung on a Burroughs cash register and the code numbers concerned will be inserted on the tape opposite the sale to identify the item sold. Each day the cash register will be totaled, recapped by stock number and a Form IRS-1 covering such sales will be prepared.

#### Preparation of Form IRS-20—Cash Sales

At the end of each work day a separate Form IRS-20 will be prepared to transmit Forms IRS-1 for cash sales to the cashier. In this case Form IRS-20 will show:

1. A check (✓) shown in the square indicating "Cashier".
2. Stores location
3. Date
4. Shift

5. Grand total of all the Forms IRS-1 for each sales.
6. Serial number of Forms IRS-1 being attached. When a series of unbroken serial numbers are to be transmitted, the beginning and ending serial numbers of each series will be shown.
7. Acknowledgment of the receipt of the petty cash fund.

#### Distribution of Form IRS-1

Forms IRS-1 for cash sales, will be distributed as follows:

Original—Routed to the general accounting department with the triplicate copy of Form IRS-20 to be handled as discussed in Bulletin Number 51-37.

Duplicate—Given to the employee as a receipt.

TriPLICATE—Routed to the cashier with the cash and the original and duplicate copy of Form IRS-20. The cashier will check the cash and the Forms IRS-1 against the Form IRS-20 and, if correct, will sign the duplicate copy of Form

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	Sale of Safety Equipment	

IRS-20 returning it to the safety stores section. The cash and the triplicate copies of Form IRS-1 and Form IRS-20 will be handled as discussed in Bulletin Number 51-37.

**Fourth Copy**—Routed to safety control office and filed by badge number except when covering cash register sales, in which case this copy will be filed by serial number.

**Fifth Copy**—Handled by the general accounting department representative the same as for payroll deductions.

### Delivery of Forms

A safety stores representative will deliver the above forms to the cashier, payroll department and general accounting department before 10:00 A. M. daily. This representative will wait for the cashier and payroll department to check Forms IRS-1 against Form IRS-20. When the forms have been checked, the representative will return with the signed duplicate copies of Form IRS-20.

### Preparation of Form IRS-8

When an employee who has purchased a safety stores item returns it in good condition for credit, an "Employee's Sales Refund" (Form IRS-8—Rev. 4/42) will be prepared in four copies showing the following information:

1. Date
2. Purchase date and Form IRS-1 number upon which it was purchased. This information may be

obtained from the safety stores control office if the employee cannot furnish it.

3. Employee's badge, building, department and storeroom numbers.

4. Quantity, description, stock code number, net amount, sales tax, and gross amount. This should agree with that shown on the original copy of Form IRS-1.

5. Employee's name

6. Reason why credit is allowed

7. Approval of safety stores supervisor

The safety stores section will not refund cash for merchandise returned by employees whether or not they were originally purchased for cash.

#### ~~Distribution of Form IRS-8—Payroll Deductions~~

The serial numbers of Form IRS-8, when the original sale was made by a payroll deduction, will be recorded on the Form IRS-20 prepared for the payroll department. When this is complete, these Forms IRS-8 will be distributed as follows:

Original—Routed to the payroll department with the Forms IRS-1 and IRS-20 for that day.

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Duplicate—Given to the employee as a receipt.

TriPLICATE—Routed to the general accounting department with the triplicate copies of Forms IRS-1 and IRS-20.

Fourth Copy—Routed to the safety stores control office.

#### Cash Sales

When the Form IRS-8 covers a sale originally made for cash, the safety stores section will prepare a "Petty Cash Voucher" (Form CA-10—Rev. 5/42) in original only, showing the following information:

1. Date
2. Name of employee in the space titled "Pay"
3. Amount to be paid
4. Charge "Safety Stores" account "1251"
5. Description—"Returned Safety Equipment Sold to Employee for Cash"
6. Requested by
7. Approval of the supervisor of the safety stores section.

Form CA-10 with the first three copies of Form IRS-8 will be given to the employee. The employee will take them to the cashier where they will be handled as discussed in Bulletin Number 51-37. The fourth copy of Form CA-8 will be sent to the safety stores control office.

## Preparation of Form IRS-53

When the general accounting department representative completes his "Daily Summary of Safety Stores Issues" (Form IRS-51) as discussed in Bulletin Number 51-37, he will give it to the supervisor of the safety stores section. The supervisor will use Form IRS-51 to prepare a "Weekly Sales Report" (Form IRS-53). Form IRS-53 will segregate by stock code number the daily safety stores issues between merchandise loaned to employees and merchandise sold to employees. Form IRS-53 will be used to prepare a weekly report to the head of the safety department showing the quantity of safety stores merchandise sold and/or loaned to employees during the week.

## Forms Mentioned

The following forms are mentioned in this procedure:

Form IRS-1 (Rev. 2/43) "Employee's Sales Ticket"

Form IRS-52 "Register Recapitulation"

Form IRS-20 (Rev. 3/43) "Autographic Register Report"

Form IRS-8 (Rev. 4/42) "Employee's Sales Refund"

Form CA-10 (Rev. 5/42) "Petty Cash Voucher"

Form IRS-51 "Daily Summary of Safety Stores Issues"

Form IRS-53 "Weekly Sales Report"

[fol. 1212]

Date              Issued    5/3/43  
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### Bulletins Referred to

The following bulletins are referred to in this procedure:

Bulletin Number 53-6 "Employee Sales by Payroll Deductions"

Bulletin Number 51-37 "Safety Stores Accounting"

### Departments Affected

The following departments are affected by this procedure:

Safety Department

Payroll Department

General Accounting Department

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 Revised                      Department  
 Issuing Safety Equipment at  
 Company's Expense

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### Purpose

The purpose of this bulletin is to outline the procedure to be followed by the safety stores section for issuing items to employees at the expense of the company.

### Issues From Safety Stores

Items carried by safety stores which are issued to employees (see Bulletin Number 16-10) will be recorded on a "Loaned Safety Equipment Issues" (Form IRS-38—Rev. 3/43). Form IRS-38 will be prepared in triplicate by the employee's department head who will enter the following information:

1. Date, badge number, and employee's name
2. Building number, department number and occupation
3. Description and quantity of material to be issued
4. Signature of employee's department head
5. Material to be obtained

### Approval of Form IRS-38

Safety stores will be supplied with a list of supervisors who are authorized to approve Forms IRS-38 and no issue will be made unless the signature of an authorized supervisor is on the form. Each item issued will remain charged out to the employee receiving it until the item is returned or otherwise properly accounted for.

### Completion of Form IRS-38

Upon presentation of Form IRS-38 to the safety stores clerk, the following information will be added to the form:

1. Safety store number
2. Size, price, and code number of the items issued
3. Signature of safety stores clerk issuing the items
4. Signature of the employee receiving the items.

### Distribution of Form IRS-38

Form IRS-38 will be distributed as follows:

Original and Duplicate—To factory accounting department which will assign an account number to both copies and forward them to the general accounting department. After verification of prices and codes, the duplicate copy will be forwarded to the tabulating department for key punching of cards. After key punching, the duplicate copy will be returned to the general accounting department where it will be matched with the original copy and filed.

Triplicate—Sent to the safety clerical office to be filed.

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**Departmental Procedure—Safety Department**  
**Issuing Safety Equipment at Company's Expense**

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## Replacements

Certain items to be determined by the safety department with the approval of the management, such as guard equipment, etc., will be issued originally at the expense of the company but will be replaced only at the expense of the employee. In this case, an "Employee's Sales Ticket" (Form IRS-1—Rev. 2-43) will be prepared to cover the replacement as outlined in Bulletin Number 16-12. Certain other types of equipment will be replaced at the expense of the company when proof is presented that the original equipment is worn out or broken. This equipment or its parts should be returned to the safety stores for replacement.

## Return of Loaned Equipment

When an employee returns loaned equipment to the safety stores the safety stores clerk will prepare a "Returned Safety Equipment" (Form IRS-45—Rev. 12/42) in triplicate. Form IRS-45 will show:

1. Badge number, department number, and date
2. Number of safety store and building number
3. Complete description of each item returned

## Distribution of Form IRS-45

Form IRS-45 will be signed by the employee returning the safety equipment and by the safety stores clerk receiving the equipment. Form IRS-45 then will be distributed as follows:

**Original and Duplicate**—To the safety clerical office. The corresponding triplicate copy of Form IRS-38 will be removed from the file and stamped with an "Equipment Returned" stamp and returned to the file. Both copies of Form IRS-45 then will be forwarded to the general accounting department.

**TriPLICATE**—To the employee as a receipt for returned equipment.

### **Return of Used Items**

Used items which are returned to the safety stores in good condition and suitable for reissue will be segregated from new stock and issued to other employees through the use of Form IRS-38 marked "Reissued".

### **Disposition of Unfit Stock**

Used items returned to the safety store not in condition for reissue will be segregated for disposal. The inventory clerk then will prepare a "Request for Disposition of Class 'B' and 'C' Property" (Form GS-36) as outlined in Bulletin Number 30-3.

### **Loaning Second Pair of Safety Glasses**

Occasionally employees will report to work without their safety glasses and will be required to obtain a second pair from the safety store. When this occurs, the safety stores clerk will prepare and have the employee sign a "Payroll Deduction Authorization" (Form CP-2—Rev. 6/42). At this time a clear understanding will be reached with the employee that if the second pair of glasses is not returned within five days from the date of issue, the Form CP-2 which he has signed will be processed and a payroll deduction will be made. The safety stores clerk will indicate on the face of the Form CP-2 "Loaned Glasses to Be Re-

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turned (Date)'. Forms CP-2 covering this type of transaction will be placed in a pending file and if the safety glasses are not returned by the specified date, the forms will be distributed in the usual manner and the deduction will be made. If the employee returns the glasses within the specified time, the safety stores clerk will remove Form CP-2 from the pending file, write "Cancelled (Date)". Give the original copy to the employee as a receipt, and destroy the remaining copies.

#### Clearance in the Case of Terminations

If an employee's services are being terminated, he will present the fifth copy of "Termination of Employment" (Form IRP-3—Rev. 7-42) to the safety department clerk in Building 107. The safety department clerk will indicate clearance, sign in the space provided, and instruct the employee to report to the termination clerk in the employment service department. Form IRS-45 will be prepared and distributed as outlined above.

#### Forms Mentioned

The following forms are mentioned in this procedure:

Form IRS-38 (Rev. 3/43) "Loaned Safety Equipment Issues"

Form IRS-1 (Rev. 2/43) "Employee's Sales Ticket"

Form IRS-45 (Rev. 12/42) "Returned Safety Equipment"

**Form GS-36 "Request for Disposition of Class 'B' and 'C' Property"**

**Form CP-2 (Rev. 6/42) "Payroll Deduction Authorization"**

**Form IRP-3 (Rev. 7/42) "Termination of Employment"**

#### **Bulletins Referred To**

**The following bulletins are referred to in this procedure:**

**Bulletin Number 16-10 "Classification of Items Handled"**

**Bulletin Number 16-12 "Sale of Safety Equipment"**

**Bulletin Number 30-3 "Release From Accountability on Class 'B' and 'C' Property"**

#### **Departments Affected**

**The following departments are affected by this procedure:**

**Safety Department**

**General Accounting Department**

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Date      Issued      3-2-43  
 Date      Effective      2-1-43

The United States Cartridge Co.  
 St. Louis, Missouri  
 Manual of Procedure  
 Personnel—Safety  
 Ordering Prescription Lenses

Bulletin  
 Number 16-14  
 Unit Safety  
 Stores  
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### Purpose

The purpose of this bulletin is to outline the procedure to be followed in ordering and delivering prescription lenses to employees.

### Preparation of Prescription Envelope

An employee needing prescription lenses will go to the office of the oculist located in safety stores, where his eyes will be tested and examined. After noting the correction needed, the oculist will prepare a "Prescription Envelope" which will show:

1. Date
2. Prescription number
3. Name and badge number of employee
4. Price of lenses.

### Preparation of Form IRS-1

The prescription envelope will be given to a safety department clerk located in the oculist's office, who will record the sale on an "Employee's Sales Ticket" (Form IRS-1) as described in Bulletin Number 16-12. The clerk preparing Form IRS-1 for prescription lenses will enter the Form IRS-1 serial number on the prescription envelope. Prescription lenses may be sold for cash or paid for through payroll deduction. In any case, the Form IRS-1 will be prepared at the time the order is entered, and if the sale is for "Cash", the cash will be collected at the time the Form IRS-1 is prepared. After preparing Form IRS-1, the safety department clerk will stamp on the prescription envelope "Payroll Deduction" or "Cash". The prescription envelope then will be returned to the oculist, who will send it to the optical company where the prescription lenses will be made. The distribution of Form IRS-1 will be the same as outlined in Bulletin

Number 16-12 except that the fourth copies will be delivered once each day to the safety stores supervisor instead of to the safety control office.

### Requisitioning Goggle Frames and Cases

From time to time the safety department clerk located in the oculist's office will requisition goggle frames and cases as required from the safety stores unit. A "Loaned Safety Equipment Issues" (Form IRS-38 Rev. 9/42) will be used for this purpose (see Bulletin Number 16-13). Such goggle frames and cases will be handled as a department expense and will be issued, no charge, to employees buying prescription lenses.

### Delivering Lenses to Employee

Prescription lenses will be received from the optical company by the safety stores receiving station and will be delivered to the oculist's office (see Bulletin Number 16-15). Upon receipt of the lenses in the oculist's office, they will be fitted into goggle frames, replaced in the prescription envelopes, and filed by badge number. The glasses and case will be given to the employee upon presentation of the duplicate copy of Form IRS-1.

### Form Discussed

The following forms were discussed in this procedure:

Form IRS-1 - "Employee's Sales Ticket"

Form IRS-38 (Rev. 9/42) "Loaned Safety Equipment Issues"

### Bulletins Referred to

The following bulletins have been referred to in this procedure:

Bulletin Number 16-12 "Sale of Safety Equipment"

Bulletin Number 16-13 "Issuing Safety Equipment at Company's Expense"

Bulletin Number 16-15 "Receiving and Accounting for Prescription Lenses".

[fol. 1217]

Date  
Issued 3/8/43  
Date  
Effective 3/8/43  
Revised

The United States Cartridge Co.  
St. Louis, Missouri  
Manual of Procedure  
Personnel—Safety  
Receiving and Accounting for  
Prescription Lenses

Bulletin  
Number 16-15  
Unit Safety  
Stores  
Page 1 of 2

### Purpose

The purpose of this bulletin is to outline the procedure to be followed by the safety stores unit for receiving and accounting for prescription lenses.

### Picking Up Lenses From Optical Company

The prescription lenses ordered, as described in Bulletin Number 16-14, will be picked up by company truck from the optical company with three copies of the vendor's invoice and delivered direct to the safety stores receiving station.

### Vendor's Invoice

The vendor's invoice will show the following information for each item appearing thereon:

1. Name and badge number of employee for whom ordered.
2. Serial number of the "Employee's Sales Ticket" (Form IRS-1).
3. Prescription number.
4. Amount of charge.

### Checking Vendor's Invoice

When prescription lenses are received by the safety stores receiving station, the "Prescription Envelopes" will be checked against the vendor's invoice. Each item on the vendor's invoice will be further checked against the corresponding fourth copy of Form IRS-1.

received from the safety department clerk located in the oculist's office (see Bulletin Number 16-14). If the invoice is correct and each item is represented by a corresponding Form IRS-1, all copies of the vendor's invoice will be certified to be correct and signed by the supervisor of the safety stores unit. The fourth copies of the corresponding Form IRS-1 then will be forwarded to the safety control office. However, if the invoice is incorrect, all copies immediately will be returned to the vendor with an explanation and the fourth copies of the Form IRS-1 will be retained until a corrected invoice is received.

#### Disposition of Vendor's Invoice

All three copies of the correct and certified vendor's invoice will be forwarded to the general accounting department of the comptroller's division where it will be handled as outlined in Bulletin Number 51-37.

#### Schedule of Rates

Under the terms of the contract with the optical company, effective February 1, 1943, the following rates will be charged for prescription lenses:

Plano to 4. Diopters Sphere or Cylinders	Pair Spheres	1 Sphere & 1 Compound	Pair Compounds
Single Vision .....	\$4.30	\$4.70	\$5.05
Kryptok Bifocals .....	7.50	7.85	8.15
Ultex A Segment Bifocals.	9.25	9.50	9.75

For powers above 4.00 diopter sphere and up to 7.00 diopter sphere and for cylinders above 4.00 diopters and up to 6.00, add \$1.50 per pair.

[fol. 1218]

Date	The United States Cartridge Co.	Bulletin
Issued 3/8/43	St. Louis, Missouri	Number 16-15
Date	Manual of Procedure	Unit Safety
Effective 3/8/43	Personnel—Safety	Stores
Revised	Receiving and Accounting for	Page 2 of 2
	Prescription Lenses	

<b>For Crookes, Cruxite and Calobar</b>	<b>Single Vision</b>	<b>Add \$2.00</b>
	<b>Kryptox Bifocals</b>	<b>" 2.00</b>
	<b>Ultex A Bifocals</b>	<b>" 2.50</b>

For Prisms—Single Vision and Bifocals 0.50 to 7 degrees add \$1.50 per pair.

For one lens only—Deduct 50 percent.

#### Forms Discussed

The following form was discussed in this procedure:

Form IRS-1 "Employee's Sales Ticket"

#### Bulletins Referred to

The following bulletins were referred to in this procedure:

Bulletin Number 51-37 "Safety Stores Accounting"

Bulletin Number 16-14 "Ordering Prescription Lenses"

[fol. 1219]

Date Issued 5/19/43  
 Date Effective 5/19/43  
 Revised

The United States Cartridge Co.  
 St. Louis, Missouri  
 Manual of Procedure  
 Departmental Procedure—Safety  
 Department  
 Shoe Repairs for Employees

Bulletin  
 Number 16-16  
 Unit Safety  
 Stores  
 Page 1 of 2

### Purpose

The purpose of this bulletin is to outline the procedure to be followed in handling the repair of safety shoes for employees.

### Use of Form IRS-1

When an employee leaves shoes for repair he will either pay cash or authorize a payroll deduction to be made covering the cost of the repairs. In either case a clerk in the safety stores will prepare and distribute an "Employee's Sales Ticket" (Form IRS-1—Rev. 2/43) as outlined in Bulletin Number 16-12, charging the employee for the shoe repair in accordance with the schedule of costs set up in a contract with the shoe repair company. No state sales tax will be charged on shoe repairs.

### Preparation of Form IRS-41

The safety stores clerk also will prepare a serially numbered "Shoe Repair Check" (Form IRS-41—Rev. 1/43) in three parts. The parts will be numbered 1, 2, and 3 and each part will bear the same serial number. The first and second parts of the form will show the following information:

1. Employee's name and badge number
2. Department number
3. Work to be done and amount of charge
4. Serial number of Form IRS-1

The third part of Form IRS-41 will show the date received and date promised and will be signed by the safety stores clerk preparing the form.

## Distribution of Form IRS-41

The first and second parts of Form IRS-41 will be attached to the shoes. The third part of the form will be given to the employee as a claim check.

## Delivery of Shoes to Repair Company

The tagged shoes to be repaired will be routed to the safety stores receiving station where a transmittal list will be prepared in duplicate. The transmittal list will show the number of pairs of shoes to be sent out for repair and the first and last serial numbers of the attached Forms IRS-41. The shoes to be repaired will be delivered to the shoe repair company by company truck with both copies of the transmittal list. At the time of delivery an employee of the shoe repair company will sign the original copy of the transmittal list which will be returned by the operator of the company truck to the safety stores receiving station. The duplicate copy of the transmittal list will be retained by the shoe repair company.

## Return of Shoes to Safety Stores

Repaired shoes will be picked up at the shoe repair company by company truck with the first and second parts of the Form IRS-41 still attached and with three copies of the vendor's invoice covering the charges for repairs on the shoes being picked up.

## Return of Shoes to Employee

The repaired shoes will be received by the safety stores receiving station where the second part of the Form IRS-41 will be detached and retained for the purpose of checking the vendor's invoice. The repaired shoes with the first part of Form IRS-41 will be routed to the safety stores, where they will be held

[fol. 1220]

Date  
Issued 5/19/43  
Date  
Effective 5/19/43  
Revised

The United States Cartridge Co.  
St. Louis, Missouri  
Manual of Procedure  
Departmental Procedure—Safety  
Department  
Shoe Repairs for Employees

Bulletin  
Number 16-16  
Unit Safety  
Stores  
Page 2 of 2

until called for by employees. Shoe will be delivered to an employee upon presentation of the third part of Form IRS-41. The first part of Form IRS-41 then will be detached from the shoes and the first and third parts destroyed by the safety stores clerk making delivery of the shoes to the employee.

#### Information to Be Shown on Vendor's Invoice

The shoe repair company will be required to show the contract number on each invoice and the following information for each item on the invoice:

1. Description of item
2. Repair work performed
3. Employee's badge number
4. Serial number of Form IRS-1
5. Amount of each item.

#### Checking Vendor's Invoices

Upon receiving the original and two copies of the vendor's invoice and the repaired shoes in the safety stores receiving station, the second part of Form IRS-41 will be used to verify the number of items received as shown on the vendor's invoice. The vendor's invoice will be further checked against the corresponding fourth copies of Form IRS-1. The amount charged for work performed will be verified to be correct and in accordance with the terms of the contract with the shoe repair company. If the invoice is correct, the safety stores supervisor will certify the invoice to be correct and in accordance with the terms of the con-

tract. If the invoice is incorrect, all copies will be returned to the vendor for correction. All three copies of correct and certified invoices will be forwarded to the general accounting department of the comptroller's Division where it will be handled as outlined in Bulletin Number 5137.

### Disposition of Forms

After certifying the vendor's invoice, the fourth copies of the Form IRS-1 and the second part of Form IRS-41 will be forwarded to the safety control office where they will be filed.

### Forms Mentioned

The following forms are mentioned in this procedure:

**Form IRS-1 (Rev. 2/43) "Employee's Sales Ticket"**

**Form IRS-41 (Rev. 1/43) "Shoe Repair Check"**

### Bulletins Referred To

The following bulletins are referred to in this procedure:

**Bulletin Number 16-12 "Sale of Safety Equipment"**

**Bulletin Number 51-37 "Safety Stores Accounting"**

### Departments Affected

The following departments are affected by this procedure:

**Safety Department**

**General Accounting Department**

[fol. 1221]

Date Issued      April 9, 1943  
 Date Effective    April 9, 1943

The United States Cartridge Co.  
 St. Louis, Missouri  
 Manual of Procedure  
 Departmental Procedure—Safety  
 Department  
 Work Order Follow-Up

Bulletin  
 Number 16-17  
 Unit Work Order,  
 Sanitation &  
 Explosives  
 Page 1 of 2

### Purpose

The purpose of this bulletin is to outline the procedure to be followed by the work order follow-up section of the safety department in initiating and following through on changes and improvements pertaining to safety matters.

### Source of Work

Projects regarding safety improvements which will be initiated by the work order follow-up section will be derived from three sources:

1. Suggestions and recommendations made by the safety engineers in the course of their daily inspections, and noted on their daily log report.
2. Miscellaneous suggestions originating within the safety department.
3. Employees' suggestions regarding safety, which have been referred to the safety department by the suggestion committee.

### Investigations of Suggestions

The results of the investigation of suggestions submitted through the suggestion committee will be reported in writing to the committee. Results of investigations of suggestions received from the safety engineers will be given to them through personal contact.

### Use of Form GS-350.

Suggestions which have merit and which are to be put into effect will be initiated by the work order follow-up section by preparing in triplicate a "Re-

"Request for Work Order" (Form GS-350—Rev. 7/42), as outlined in Bulletin Number 30-1. Form GS-350 will be signed by the general safety engineer and approved by the chief safety engineer.

#### Approval of Form GS-350

The triplicate copy of Form GS-350 will be retained by the work order follow-up section and filed according to the craft which will perform the work. The original and duplicate copies will be taken to the chief safety engineer who will contact the head of the department concerned to explain the nature of the work to be done and obtain his approval on Form GS-350. The approved Form GS-350 then will be sent to the plant maintenance department where it will be referred to the proper section for performing the work.

#### Notice of Completion

Receipt of the fourth copy of the "Work Order" (Form GS-200—Rev. 12/42) will serve as notice to the work order follow-up section that the job has been completed. The triplicate copy of Form GS-350 will be removed from the pending file, placed with the fourth copy of Form GS-200, and filed in the permanent file in the supervising safety engineer's office. In actual practice, the safety engineer assigned to this section will have been informed of the completion by following through on Forms GS-350 that are pending. Close contact will be kept at all times with the progress being made on jobs recommended by the safety department.

#### Coordination of Safety Improvements

One of the definite functions of the work order follow-up section is to apply worth-while suggestions regarding one particular unit to all of the other units. In this way considerable assistance can be given toward making the manufacturing methods and safety practices uniform throughout the plant.

[fol. 1222]

Date Issued April 9, 1943	The United States Cartridge Co. St. Louis, Missouri	Bulletin Number 16-17
Date Effective April 9, 1943	Manual of Procedure Departmental Procedure—Safety Department Work Order Follow-Up	Unit Work Order, Sanitation & Explosives Page 2 of 2

### Forms Mentioned

The following forms are mentioned in this procedure:

Form GS-350 (Rev. 7/42) "Request for Work Order"

Form GS-200 (Rev. 12/42) "Work Order"

### Bulletin Referred To

The following bulletin is referred to in this procedure:

Bulletin Number 30-1 "Maintenance, Repairs and Alterations"

### Departments Affected

The following departments are affected by this procedure:

Safety Department

Plant Maintenance Department

Personnel Service Department

[fol. 1223]

Date Issued 5/31/43  
Date Effective 5/31/43

The United States Cartridge Co.  
St. Louis, Missouri  
Manual of Procedure  
Departmental Procedure—Safety  
Department  
Sale of Safety Shoes

Bulletin  
Number 16-18  
Unit General  
Page 1 of 2

### Purpose

The purpose of this bulletin is to outline the procedure to be followed in selling safety shoes under the regulations of the Office of Price Administration.

#### Sale of Shoes

##### Sale of Shoes—Regular Shoe Stamp

An employee purchasing safety shoes must turn in the designated war ration stamp as required by the Office of Price Administration when he has such a stamp available. At the time of purchase this stamp will be given to the clerk who will place the initials "W. S." (War Stamp) in the space "Special Remarks" on the "Employee's Sales Ticket" (Form IRS-1—Rev. 2/43) and then give the stamp to the general accounting department representative in the safety stores.

##### Sale of Shoes—Special Shoe Stamp

Since safety regulations require that employees in certain occupations wear safety shoes, provision has been made for permitting those employees to obtain shoes with a special shoe stamp in case their regular shoe stamp has been used. When the employee states at the time of purchase that he does not have a valid war ration shoe stamp, he will be given an "Application for a Special Shoe Stamp" (O. P. A. Form R-1703) to fill out. On this form he must state, in addition to other information, his war ration book number. If the employee is not able to furnish this number, he will be allowed to purchase the shoes but will be required to inform the safety stores of his number the

following day. After filling out Form R-1703 the employee will be allowed to purchase one pair of safety shoes as outlined in Bulletin Number 16-12. The shoe clerk will write the initials "S. S." (Special Stamp) in the space "Special Remarks" on the Form IRS-1.

### Handling and Control of Shoe Ration Stamps

#### Special Shoe Stamps

Forms R-1703 filled out by employees will be sent to the Chairman of the Ration Committee who will review the applications, indicate his approval, and return them to the general accounting department representative in the safety stores. A general accounting department clerk assigned to safety stores then will use Forms R-1703 to prepare a "Document Register" (O. P. A. Form R-181), listing the name and war ration book number of each employee purchasing shoes with a special shoe stamp. In addition, the clerk will obtain a supply of special shoe stamps from the general accounting department representative and for each name on the Form R-181 will fill in a stamp showing the war ration book number and the date. The Form R-181 and the Form R-1703 listed thereon will be sent to the Office of Price Administration approximately every three months. The special shoe stamps properly filled out will be given to the cashier who then will deposit them in the special shoe ration stamp account in the Boatman's National Bank. This account will be under the control of the general accounting department and as shoes are purchased from manufacturers, checks may be written against the shoe stamp account to supply the manufacturer with the necessary stamps.

#### Regular Shoe Stamps

Regular shoe stamps turned in to the general accounting department representative by the safety stores clerks will be given to the cashier who will deposit them in the special shoe stamp account.

[fol. 1224]

**Date** The United States Cartridge Co.  
**Issued** 5/31/43 St. Louis, Missouri  
**Date** Manual of Procedure  
**Effective** 5/31/43 Departmental Procedure—Safety  
Department  
Sale of Safety Shoes.

Bulletin  
Number 16-18  
Unit General  
Page 2 of 2

### **Forms Mentioned**

The following forms are mentioned in this procedure:

**Form IRS-1 (Rev. 2/43) "Employee's Sales Ticket"**

**OPA Form R-1703 "Application for a Special  
Shoe Stamp"**

**OPA Form R-181 "Document Register"**

### Bulletin Referred To

The following bulletin is referred to in this procedure:

**Bulletin Number 16-12 "Sale of Safety Equipment".**

#### **Departments Affected**

All departments are affected by this procedure.

[fol. 1225]

Date Issued 2/3/44  
 Date Effective 2/3/44

The United States Cartridge Co.  
 St. Louis, Missouri  
 Departmental Instructions—Safety  
 Engineering Department  
 Authorization for Issue or Sale of  
 Safety Equipment

Bulletin Number 16-21  
 Reference: Procedure No. 16-21  
 Page 1 of 2

### Purpose

The purpose of this departmental instructions bulletin is to outline the procedure to be followed in authorizing the issue of safety equipment at company expense, or the direct sale of safety merchandise through payroll deduction.

### Issues by Safety Stores

Except when replacing worn out or broken equipment which was issued originally at company expense, safety stores will issue safety equipment at company expense, and sell safety merchandise to employees through payroll deduction, only upon the presentation of an "Authorization for Issue or Sale of Safety Equipment" (Form IRS-59) properly signed by the employee who is to receive the merchandise, and approved by the employee's timekeeper. In addition, in all cases where safety equipment is to be issued to an employee at company expense, the employee also will present a "Loaned Safety Equipment" (Form IRS-38—Rev. 6-43) prepared and approved by his foreman, supervisor or department head as outlined in Departmental Instructions Bulletin Number 16-13.

### Authorizing Purchase of Safety Merchandise Through Payroll Deduction

An employee who desires to purchase merchandise from the safety stores through payroll deduction will secure a blank Form IRS-59 from his foreman, supervisor or superintendent's office, and will prepare the form in original only, listing the merchandise desired. Form IRS-59 will be signed by the employee and presented to the employee's timekeeper who will check the employee's time card. The employee must have worked at least two full shifts after induction, reinstatement or re-employment before the timekeeper will approve Form IRS-59, except when it is necessary for

merchandise such as safety shoes, etc., to be issued before the employee can start to work. In such cases, the Form IRS-59 will have a notation to this effect and be signed by the employee's foreman. Also, if the fourth copy of "Termination of Employment" (Form IRP-3—Rev. 5/43) for the employee has been received by the timekeeper, Form IRS-59 will not be approved. When these requirements have been met satisfactorily, the timekeeper will approve the Form IRS-59, enter his badge number, make the notation "Safety Stores Sale" on the employee's time card and return the Form IRS-59 to the employee. The employee will use the Form IRS-59 as his authorization to purchase safety merchandise from the safety stores.

#### Authorizing Issuance of Safety Equipment

When safety equipment is to be issued to an employee at company expense, a Form IRS-38 indicating the equipment required will be prepared in duplicate and approved by the employee's foreman, supervisor or department head. If it is necessary for the equipment, such as safety glasses, etc., to be issued before the employee can start to work, a notation to this effect will be made on Form IRS-38. Except when worn out or broken equipment is to be replaced, as outlined below, the Form IRS-38 and a Form IRS-59 then will be given to the employee who will prepare and sign the Form IRS-59, and take this form to his timekeeper for approval as outlined in the above paragraph. Upon approval of the Form IRS-59 in such cases, the timekeeper will enter the notation "Safety Stores Issue" on the employee's time card.

#### Disposition of Form IRS-59

The Form IRS-59, and Form IRS-38 (if any), then will be presented to the safety stores by the employee. After the issue or sale, the safety stores clerk will stamp the Form IRS-59 "Cancelled" and attach it to either the original copy of Form IRS-38 or the triplicate copy of "Employee's Sales Ticket" (Form IRS-1—Rev. 5/43), prepared for sales made through payroll deduction. Form IRS-59 then will be routed with

[fol. 1226]

Date Issued	2/3/44	The United States Cartridge Co. St. Louis, Missouri	Bulletin Number	16-21
Date Effective	2/3/44	Departmental Instructions—Safety Engineering Department	Reference:	Procedure
		Authorization for Issue or Sale of Safety Equipment	No. 16-21	Page 2 of 2

triplicate copy of the Form IRS-1 to the general accounting department (see Departmental Instructions Bulletin Number 16-12), or with the original copy of Form IRS-38 to the factory accounting department (see Departmental Instructions Bulletin Number 16-13).

### Replacing Worn Out or Broken Equipment

Worn out or broken safety equipment which was issued originally to an employee at company expense, will be replaced without charge to the employee when proof is presented that the original equipment is worn out or broken. In such cases, a Form IRS-59 will not be required to issue the new equipment and the employee will present to safety stores only Form IRS-38, properly approved by his foreman, supervisor or department head, along with the worn out or broken equipment, or its parts.

### Clearance Upon Employee's Termination

If an employee who during the current work week has been issued safety equipment or has purchased safety stores merchandise through payroll deduction terminates, the payroll unit will not prepare the final pay check if the clock card bears the notation "Safety Stores Sale" or "Safety Stores Issue" until they receive their copy of Form IRP-3 showing the required clearance of loaned safety equipment, or the amount due for purchase of merchandise is deducted from the amount of the final pay check.

## Forms Mentioned

The following forms are mentioned in these instructions:

Form IRS-59 "Authorization for Issue or Sale of Safety Equipment"

Form IRP-3 (Rev. 5/43) "Termination of Employment"

Form IRS-38 (Rev. 6/43) "Loaned Safety Equipment"

Form IRS-1 (Rev. 5/43) "Employee's Sales Ticket"

## Bulletins Referred to

The following departmental instructions bulletins are referred to in these instructions:

Bulletin Number 16-13 "Issuing Safety Equipment at Company's Expense"

Bulletin Number 16-12 "Sale of Safety Equipment"

## Departments Affected

All Departments are affected by these instructions.

[fol. 1227] Q. Mr. Miller, I will show you a paper consisting of 43 sheets which has been identified as Defendant's Exhibit 11, and ask you if that bundle of papers constitutes the Manual of Procedure for the safety engineering department? And I might ask you specifically, where changes were made does that show the first copy and then [fol. 1228] subsequent editions of the same document with the dates shown?

A. This is the Manual of Procedure as it applied to all the procedures covering the organization and functions of the safety department. The sheets here, however, are the latest corrected procedure in every case, and copies of the earlier procedure are not in here.

Q. The dates when those procedures were put into effect, are they indicated on the various documents?

A. They are indicated in the upper left-hand corner, and they are the effective date that each procedure became effective.

Q. And what was done with these documents? What use were they put to?

A. They were distributed to any supervisor of the company who would need the information shown in these sheets in carrying out the functions of his job. For instance, they would be given to the chief safety engineer and his assistants, and would also be given to any other supervisor in the company where any procedure is set forth which he would be required to follow.

Q. In other words, copies of these were not confined solely to the safety engineering department?

A. That is true.

Q. But were distributed to other departments where perhaps there might be some question of jurisdiction as between departments, or conflict?

[fol. 1229] A. Jurisdiction and also the cooperation.

Q. And the manner of cooperating, too?

A. Yes, sir. Coordinating.

Q. Who is responsible for those Manuals of Procedure? Who wrote them up?

A. They were written up by a number of people working together: myself, the chief safety engineer, his assistants, the controller's office; the production superintendent, general superintendent—they were written up, checked, and

revised, so that they wouldn't interfere with the proper operation of any department. So that they were written and revised by the people, first, in the department, and then in conjunction with other departments.

Q. Who gave final approval or disapproval to the issuance of these Manuals of Procedure?

A. The director of personnel.

Q. And that was true with all manuals of procedure that were written for the various departments?

A. No, sir, that was true of all the departments in the personnel division. And the controller would give the final approval on any procedures for his department, the general superintendent for any procedures in production, and so forth.

Q. But no one above those department heads passed on this. Did the general manager, for example, approve or disapprove them before they were finally released?

[fol. 1230] A. Only in certain cases.

Mr. McRoberts: We offer in evidence, if Your Honor please, Defendant's Exhibit 11.

Mr. Bond: Before stating my objection to that, may I ask this witness a few questions relating solely to the competency of the document?

The Court: Yes, sir.

Mr. Bond: As I understand you, this Manual of Procedure was prepared in the way you have described, and was given to the director, you call him chief safety engineer, and his assistants?

The Witness: Yes, sir.

Mr. Bond: Also to the supervisory personnel in the production and other departments?

The Witness: Only those portions of the manual which would influence those people were given to them.

Mr. Bond: This manual was not prepared for the information of the safety engineers and was not given to the safety engineers?

A. Yes, sir, any portion referring to work where they would need to know the information or the procedure to follow as set forth in the procedure, that procedure was given to them.

Mr. Bond: You don't mean to say that this group of papers was given to each of the plaintiffs in this case?

A. No, I do not. I say the papers in there were given to [fol. 1231] the interested man. If there was a procedure there on transportation, it was given to the safety engineer who worked for transportation. If it was a procedure on the—

Mr. Bond: Let's take transportation. A. Yes, sir.

Mr. Bond: This is a comprehensive manual of procedure? A. Yes, sir.

Mr. Bond: And if a certain part of it related to the department of transportation, it would be given to whom?

A. To the safety engineers working in transportation.

Mr. Bond: And not to the men on the shift? A. Yes, sir.

Mr. Bond: Anything that related to the men on the shift, that portion you say would be given to them?

A. Yes, sir.

Mr. Bond: But this manual as a whole was only for the information of the director's office and the supervisory personnel? A. That is true.

Mr. Bond: Now if Your Honor please, I object to it as not binding upon the plaintiffs in this case. If there were any particular portions which were given to any particular plaintiffs in this case to guide their conduct in the performance of their duties, I will have no objection to that portion being offered. But this comprehensive manual of [fol. 1232] procedure gotten up by the top management, I do not think that is binding on my clients, and I object to it.

Mr. McRoberts: It is not a question of being binding, I think it is the best evidence of what the safety depart-

ment did and how it functioned at the plant. It is sort of a constitution of the department.

The Court: Witness doesn't acknowledge the manual was given to the plaintiffs in this case?

Mr. McRoberts: Not as a whole, only parts of it. This is the detail story, this is the official record.

The Court: Why don't you produce the parts of what was given to them.

Mr. McRoberts: It is our contention when the director of the safety engineering department has given—

The Court: He is testifying what somebody else did, and you don't produce the document.

Mr. McRoberts: This is the document:

The Court: No, it isn't, he said a portion given to them, but he didn't do it, and there is no way in which he could say what part was given.

Mr. McRoberts: I am offering this on the theory everyone of the plaintiffs has read everyone of these.

The Court: You are offering it on the theory to show who it was.

Mr. McRoberts: It shows the functions of the department primarily, and this definitely was related to the rest of the [fol. 1233] plant. It goes to show, I believe, what this witness has already testified to, that this department was operated as an advisory station organization, advising the productive departments how to operate properly.

Mr. Bond: That has no bearing on the classification.

Mr. McRoberts: I do not contend, if Your Honor please, that so far as any individual employee is concerned that he has seen all of this, or in particular any employee any particular part of it. I can't make that proof, but I do

believe it is admissible for what it is worth to show the  
functions of this department in which these men were  
working.

The Court: It may be admitted subject to the objection.

[Vol. 1234] Q: (Mr. McRoberts) Now Mr. Miller, did you  
have occasion from time to time to write up descriptions,  
or a description of the duties which the safety engineer  
performed? A. I did, yes, sir.

Q. Did you have anything to do with that (passing a  
paper to the witness)? A. The last page only, yes.

[fol. 1237] Q. Mr. Miller, I will show you a paper which has been identified as "Defendant's Exhibit 12," and ask you what that is?

A. This is a form headed "Administrative Exemption."

Q. I do not mean tell the contents, but what is the nature of the document?

A. The nature of the document, it was written up and describes the duties of the employee covered by this sheet and the requisites of the job. That is all.

Q. Did you have anything to do with the preparation of that document? A. Yes, sir.

Q. What did you have to do with it?

A. The chief safety engineer, the occupation [analyst] himself.

Q. Who is occupation analyst? Tell us about him. Describe him.

[fol. 1238] A. He was a man whom we hired to make a determination as to whether we should pay or should exempt from the payment of overtime various salaried employees.

Q. In cooperation with him?

A. In cooperation with him. And he came to us with about four years experience with the Wage and Hour Division doing the same type of work and was hired for the specific purpose of making a determination as to whether these employees should be classified as exempt from overtime under the provisions of the Fair Labor Standards Act, or should be paid overtime.

Q. In any event, in connection with him and with Mr. Strickland, you helped to prepare that particular document? A. Yes, sir.

Q. And what was the purpose of preparing that document?

A. The purpose was to furnish all of the information in regard to these jobs to this occupational analyst so that he could then make his determination on those employees.

Q. Well, did you attempt in that document to describe the job referred to in it? A. Yes.

Q. And what particular job is referred to in that document?

A. The job referred to is shown at the top of the sheet as Safety Inspector Code 984.

Q. And was this document prepared as part of a preparation of a number of similar documents covering a lot of different jobs in the plant?

A. Yes, sir, it was.

Q. And does that document, or did that document describe the characteristics and qualifications of the job and set forth therein correctly to the best of your knowledge at the time? A. It does briefly.

Q. It is a very brief statement? A. Yes, sir.

Q. At the time that was prepared. When was it prepared? A. July 22, 1942.

Q. And would you say that is a correct summary description of the job of safety inspector?

A. It is a correct general description, omitting a great many very small details, yes, sir.

Mr. McRoberts: We offer in evidence "Defendant's Exhibit 12", Your Honor.

Mr. Bond: Your Honor please, I certainly object to that. It is a self-serving statement prepared by the management for the information of an occupational analyst whom they had hired to classify these men. There is no evidence that the duties of this job as set out herein were ever communicated to the plaintiffs or they were ever ordered to perform these duties or ever did perform them, but here in the management office they undertook to classify men. They hired a man to do it, and they say what the duties [fol. 1240] of the job are, or tell him in the document what the duties of the job are and ask him to classify such a job. I say that is purely self-serving and it isn't binding on my clients. And it is because it was erroneous and that it is an erroneous document and an erroneous classification that we bring this suit.

Mr. McRoberts: We submit this is a record made in the ordinary course of business, not for the purpose of this litigation at all. And the witness further testified it correctly states the duties.

The Court: Admitted subject to the objection.

(A paper is marked "Defendant's Exhibit 13")

Q. Mr. Miller, I show you a paper which has been identified as Defendant's Exhibit 13, consisting of some 7 or 8 pages, and ask you what that is?

A. This is a group of seven or eight pages which give a complete job description of the seven or eight job classifications shown on these pages.

Q. And this particular document covers other jobs than safety engineers, does it? A. Yes, sir, it does.

Mr. Bond: What is that document?

Mr. McRoberts: Job descriptions of various jobs.

Q. Let me direct your attention then, if you will, to the page covering safety engineers or safety inspectors. Is [fol. 1241] that the page? A. I have it.

Q. Did you have anything to do with the preparation of that document? A. Yes, sir.

Q. Tell us under [that] circumstances and how that happened to be prepared?

A. It was prepared at the same time that we prepared job descriptions for every job classification at the plant. Those classifications were prepared for all hourly rates and all salary rated jobs. The original purpose in preparing them was two-fold. They were prepared for us in connection with the War Manpower Commission, they are made out on War Manpower Commission forms of job descriptions, and were used, (first, for securing [deferrence] for these employees whom we needed to get deferred; and they were prepared secondly—

Q. That is, deferred from military service?

A. Yes, sir, Judge. And second, they were prepared and submitted for the purpose of securing approval of the War Labor Board and of the Treasury Department of our hourly rated and salary rated job ranges.

Q. And when were they prepared?

A. They were prepared in March and April, 1943.

Q. Did you assist in the preparation?

A. Yes, sir, I directed it.

Q. And this particular page of that particular document [fol. 1242] purports to contain a description of the job of safety engineer. Is that correct? A. That is right.

Q. And prepared for the purposes that you state?

A. Yes, sir.

Q. And was and is that a correct description of the job?

A. Yes, sir.

Mr. Bond: Object, Your Honor, that is not the way to prove what the duties of these men were, nor what these men were required to do. He gives him a self-serving document prepared for certain purposes other than the

guidance of these safety engineers. There is no evidence it was ever given to the safety engineers or that they were ever required to do those things. That is one of these things that conflicts with all the evidence. And I say it is incompetent because a self-serving statement not given to the men and which the men were not required to follow, and it isn't the way to prove these were the men's duties.

The Court: He may answer subject to the objection.

(Last preceding question was read)

A. The answer is, we were very particular to see that it was a correct description of the job because of the two purposes for which we were preparing it. The actual method of preparation was that I myself, the chief safety director and his assistants prepared it. In the preparation of it we [fol. 1243] actually conferred with and talked to some of these safety engineers and had them look over and read what we were writing as to the description of the job. Subsequent to that we also discussed all of these descriptions with various other supervisors throughout the organization, including production, controller's office, general manager's office, and so forth. They were checked carefully about three or four times in addition to checking them with the men.

Q. And was this job description actually used in obtaining deferments?

Mr. Bond: Object to that as incompetent, Your Honor. What they say to obtain deferments is not a criterion of the way the men should be classified under the Fair Labor Standards Act.

The Court: Objection sustained.

Mr. McRoberts: We offer in evidence Defendant's Exhibit 13. We are only interested in one sheet that relates to safety inspector, and we only offer that one sheet, unless you wish the rest of it.

Mr. Bond: Object to it as incompetent, irrelevant and immaterial, and self-serving statement of plaintiffs' duties, and there being no evidence it was ever communicated to plaintiffs, or that there were ever any requirement that the plaintiffs perform the duties.

The Court: It will be admitted subject to the objection.

Note

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[fol. 1253] Q. Now Mr. Miller, referring to this Plaintiffs' Exhibit E<sub>p</sub> entitled "General Instructions," copies of which were given to each of the plaintiffs who have testified. Were those instructions ever revoked or modified?

A. They were not, no, sir.

Note

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[fol. 1256] Q. Mr. Miller, I will show you a paper which has been identified as "Defendants' Exhibit 14," and I will ask you what that is?

A. This is a list of duties of an inspector Senior Code 843.

Q. Did you have anything to do with the preparation of that document? A. Yes, sir.

Q. Will you tell us how and under what circumstances and for what purpose that was prepared?

A. This was prepared—it is a copy of the job description which I just talked about, and was prepared for two purposes; first, for the purpose of securing deferment, for the War Manpower Commission.

Mr. Bond: Object to that and ask that it be stricken out.

The Court: Sustained.

Q. You stated that this is a copy of the information that is set forth on Defendant's Exhibit 13? A. Yes, sir.

[fol. 1257] Q. It is merely a separate sheet which was prepared preliminary to the making up of this Defendant's Exhibit 13? A. Yes, sir.

Q. Then I want to re-ask you the question about it. I would like to call your attention, Mr. Miller, to certain percentage figures which are shown here under the caption "per cent of time" opposite the description of different duties. What do those percentages represent?

A. The percentage figures represent our determination of the average per cent of time worked by the average safety engineer in carrying out these functions. They were arrived at after we had observed the carrying out of the job and after discussion with some of the safety engineers and the various supervisors.

Q. And are these the same percentage figures which appear on Defendant's Exhibit 13, and does the same explanation apply with respect to these figures?

A. Yes, sir, that is true.

Q. Mr. Miller, refreshing your recollection, if you care to, from Defendant's Exhibit 13, would you tell the Court in a general way how the employee, the safety engineer's time was allocated to his different duties? Approximately what percentage of his time has been in the different types of work, the average?

Mr. Bond: Object to that as calling for a conclusion and [fol. 1258] a self-serving statement, and for the further

reason that any division of duties on a percentage basis is wholly immaterial where the defense is that the exemption is on the ground of an administrative employee. That question of percentage of exempt and nonexempt only becomes material where the defense is that the exemption is on the ground of an executive. The decisions all differentiate that where a man is a part time executive and a part time worker and whether or not his time as worker exceeds 20 per cent is important, but where the defense is administrative, that he exercises judgment and discretion and is a real administrator, the question of the percentage is a wholly immaterial factor. And further, because this is just something gotten up by the management in which the plaintiffs were not a party, and it isn't binding on them.

Mr. McRoberts: The purpose of this is not to show that the employees spent less than 20 per cent of their time doing manual labor. Plaintiffs' own testimony is they did none of that, they did not undertake to do the work, but merely instructed, advised and reported. The purpose is to show, for example, they spent a substantial part of their time checking the manual movements of employees and pointing out unsafe practices to the supervisors, and a small part of the time submitting written reports or doing other things of the sort. It is to help describe the actual day by day work of these men.

(Last preceding question was read.)

[fol. 1259] Mr. Bond: I might add to my objection that there is no proof that the plaintiffs, or any engineers, were required to make any reports of percentage of time devoted to any duties, and that any opinion, any statement that the witness might make would be guesswork.

May I ask him a few questions on this?

Mr. Bond: Were the safety engineers required to make any report to the management of how the time was distributed between the various duties? A. They were not.

Mr. Bond: Have you in your files any records made at the time showing the daily duties were distributed on a percentage basis? A. This is the only record we have.

Mr. Bond: And that is an estimate?

A. It is an approximation gathered by watching the job.

Mr. Bond: But not based on any records or reports? No safety engineer was required to report how much of his time he spent in patrolling or writing a report or doing anything else, was he? A. No, sir, they were not.

The Court: Objection sustained.

Mr. McRoberts: Your Honor please, we offer to prove by this witness that if permitted to answer, that the employees would spend in the different duties indicated on [fol. 1260] Defendant's Exhibit 13 the percentages of time of the total time set forth opposite "description".

The Court: The Court will permit you to show the production time if it is based upon any record, but just to let the man guess at it, the Court isn't going to do.

Q. (Mr. McRoberts) Mr. Miller, will you explain a little more in detail as to how you arrived at these figures?

A. Yes, sir, the chief safety engineer in charge of the department, two of his assistants and myself, went out in the factory and checked and watched the jobs of some of these safety engineers.

The Court: For how long a period?

A. For three days. We talked to several of the safety engineers, and the four of us with the safety engineers we were talking to decided that these were the percentages that would apply in each case. Those were secured, as I said, by watching the men doing the work, by talking to the men and with the chief safety engineer and his two assistants, and myself.

The Court: Did you watch through all three shifts?

A. Yes, sir.

The Court: Just through that?

A. We watched through one shift and about three hours of another.

Judge Bond: May I ask another question?

[fol. 1261] Mr. Bond: Name all or some of the men you talked to.

A. Safety engineers?

Mr. Bond: Yes, sir.

A. I don't know who they were.

Mr. Bond: Of the fifty-nine men who are plaintiffs in this case, you can't name one?

Mr. McRoberts: There were a lot more safety engineers besides fifty-nine.

A. Yes, sir, there were. And I may have talked to some of those. I don't know.

Q. (Mr. McRoberts) In talking with them did you ask them questions about the time spent on different duties?

A. Yes, sir.

Q. And these figures are the result of your investigation and discussion which you have described?

A. Yes, sir.

Mr. McRoberts: Now if Your Honor please, we offer to show by this witness that the time spent in the different duties described in Defendant's Exhibit 13 is substantially the amount set forth, opposite the description, of each type of duty in that exhibit.

Mr. Bond: Object for the reasons heretofore stated.

The Court: Sustained.

Q. Mr. Miller, were those safety engineers required as part of their regular work to make a written report of an accident requiring first aid treatment, and make recommendations [fol. 1262] for correcting the conditions which were found to exist? A. Yes, sir.

Mr. Bond: Object as leading and suggestive. Let him tell what they were required to do.

The Court: Objection sustained and answer stricken.

The Court: Do not answer in the future until the Court has ruled.

Q. Mr. Miller, I will show you a file of papers without having them identified and ask you to tell me what they are?

A. These are safety inspection reports, accident record reports turned in by safety engineers.

Q. And what was the occasion for the safety engineers to make such a report? What were their duties with respect to making the reports?

A. Their duties were to investigate any accident resulting in the necessity for First Aid or hospital treatment. The employee was required—the safety engineer was required to get a record from the employee as to the cause of the accident, the nature of the injury, any record of witnesses that might be available. He was also re-

quired to handle it and discuss it with the employee's supervisor, to make recommendations as to corrective or preventive action, and then turn in a written report of the results of his action.

Q. And were those reports made from time to time?

A. Yes, sir, they were.

[fol. 1263] Q. And what was done with them?

A. These reports were turned in by him to his supervisor from his supervisor to the chief safety engineer, and from the chief safety engineer to me. And they are in my file.

Q. They are part of the records of the company?

A. Yes, sir.

Q. Could you give us some idea as to the number of reports of that character that are in the file?

A. Thousands.

Q. Thousands of them? A. Yes, sir.

Q. And out of those have you selected or caused to be selected some reports made up bearing names and purporting to have been made by some of the different plaintiffs in this case, other than the ones that have already testified? A. Yes, sir, I have.

Q. And indicating the kind and type of corrective action which they took? A. Yes, sir, they do.

Q. And without going through that whole file, which is rather voluminous, will you go through the different—or do you have that file divided into different types and kinds of action that was taken?

A. Yes, sir, into the kinds of action taken by the safety engineers.

[fol. 1264] Q. All right, give me the first type of action that you have there that was taken. I don't mean the specific report but the group, what does it show?

A. It says "condemned by the safety engineer."

Q. Does that mean where some of their machinery or appliances, or something, was condemned? A. Yes, sir.

Q. Will you read into the record, giving the dates, the name of the plaintiff and the particular action that was taken according to his report, from one or two of those where that type of action was taken?

Mr. Bond: Pick them out because I will want them on cross examination.

Mr. McRoberts: Any one you read from, just lay it aside.

A. "Report of safety engineer R. Baxter, dated May 4, 1943."

Q. I don't want to bother with the details of the accident. Skip on down to the correction, or what he did.

A. "The end of a platform nearest the ladder obstructed and I condemned it from further use pending reports, on advice of Mr. Case, foreman, and Mr. Woods, general foreman, not to let the men use the platform, although filters are normally changed twice a shift."

Q. Lay that aside and pick out another one or two of them.

[fol. 1265] A. Report signed by M. J. Burk, dated July 14, 1943. "condemned both skids and had moved to dock where metal leg one will be repaired and the wooden one scrapped. Instructed both Mr. Bowman, foreman, and Mr. Marsh, general foreman; not to use any damaged skids in the future."

Q. Will you take another type of report that you have there?

A. Reports of machinery or other items taken out of service:

Q. Will you read from one or two of those?

A. Report signed by J. C. Kavanaugh, dated June 16, 1942. "I will take this up with Mr. Linge of the Millwright Department, to have machinery repaired and baling wire taken off."

Report signed by R. Carbone July 26, 1943. "Correction. Had millwrights replace guard and make proper repairs."

Mr. Bond: Those are accident reports you are reading from?

Mr. McRoberts: All of them, yes, sir.

A. Report signed by F. M. Harris: "So I told him under the circumstances I wouldn't permit the welding job to progress, all of which met with the approval of Mr. Maher." Mr. Maher is also a complainant. "I tightened rivets to permit welding at elevator freight door openings in 10. Before I inspect for information get elevator openings cleaned." It is the same report signed by Mr. Harris.

Q. Mr. Miller, I call your attention particularly to the report, safety inspection report you have in your hand, [fol. 1266] dated 8/17/43 and bearing typewritten signa-

ture of F. N. Harris, and ask you if this is one of the reports in your files, some of the reports, and is part of the company records?

A. It is one of many reports bearing the typewritten signature of F. N. Harris which came to me from the head of the safety department.

Q. And is it that part of your records kept as you have already described? A. Yes, sir.

Q. Will you read the correction in that case?

A. Correction in this report: "I reported the machine out of order and locked electric switch leaving key with safety department. Cautioned employee to be more careful in the future and to refuse to operate unsafe machines."

Q. Do you have some others?

A. Yes, sir, I have some ordered corrections here.

Q. By that you mean where certain orders have been given to the safety engineer? A. Yes, sir.

Q. Will you read one or two of them giving the names and dates?

A. Report signed by Champion, dated 12/1/42. Corrections: "I have been finding quite a few trucks having as many as four in a cab. I have been stopping truck and having some of them get out." And Carbone dated July [fol. 1267] 4, 1943: "Cautioned patient that in the future while these boxes are stacked on skid in [in] such manner as to create a hazard he should fail to unload until fixed safely."

And one signed by Carbone, dated July 2nd. "Instructed foreman, Wilson to instruct all inspectors to raise from their chairs when moving men would either place jackets into trays or remove full tote boxes."

And one signed by Mr. Bentine. "Correction: No metal for process has been ordered put there, and employee cautioned to be very careful in getting the job setup carefully."

Q. I think that is enough of that type. Are the reports that you have read typical of a number of similar reports which you selected from the files? A. Yes, sir, they are.

Q. Mr. Miller, there has been some testimony that this part of the original general instructions which I pointed out to you on page 2 was rescinded or modified. Is that true? A. No, sir, it is not.

Q. Have safety engineers always been subject to that instruction? A. Yes, sir, they have.

Q. How far back does that go, Mr. Miller?

A. It goes back to the beginning of operations.

Q. Do you have any memorandum that would show when that policy was first adopted? A. Yes, sir, I have. [fol. 1268] Q. What is it?

A. I have a letter written by the director of personnel to the chief safety engineer with a copy to the general superintendent in charge of operating, which states that the safety engineer shall have the authority to shut down operations, shut down machines and to remove employees. Dated December 11, 1941.

Q. That was even before these general instructions were issued? A. Yes, sir.

Q. And that has never been rescinded?

A. That is right.

Q. And has that authority been exercised on occasions?

A. Yes, sir, it has.

Q. Mr. Miller, the testimony shows that originally safety engineers started to work a half hour ahead of the regular production shifts, and that that policy was changed. Do you have any record as to when that was changed? A. Yes, sir.

Q. When did the change occur?

A. It was changed on March 9, 1943.

Q. From that time on what hours did the safety engineers—were they compelled to report?

A. They were required to report and work the same hours as the production shifts with whom they were working.

[fol. 1269] Mr. Bond: I think he made a mistake. You didn't mean March, 1943, did you? A. Yes, sir.

Q. And you base that upon one of your records as to when that should be done? A. Yes, sir.

Q. And what is the record on which you base that?

A. The record is a letter of that date addressed to all safety engineers stating that effective Wednesday March 10th working hours will be from 8 A. M. to 4 P. M., from 4 P. M. to 12 midnight, and from 12 midnight to 8 A. M. Then this statement follows: "This will eliminate the additional half hour required of the safety engineers each day."

Q. Now Mr. Miller, there was some testimony by Mr. Harris about a notice having been put up and then rescinded the next day? A. Yes, sir.

Q. Is this the notice that was put up and rescinded, or is this the one that was carried out?

A. This was carried out.\*

Q. And then from March 9, 1943, working hours were from 8 A. M. to 4 P. M. on the day shift, 4 P. M. to 12 midnight on the second shift, and from midnight to 8 A. M. on the night shift?

A. That is for the following day, effective the 10th.  
[fol. 1270] Q. Effective beyond that? A. Yes, sir.

Q. Now Mr. Miller, what lunch period were the safety engineers allowed?

A. Safety engineers were allowed a half hour lunch period.

Q. And that was true during the entire period both when they were reporting a half hour ahead of the production shifts, and when they were reporting at the same time the production shift reported?

A. I think in the very early days before we really got into production, they were allowed only 20 minutes; but that was in, you might say, our construction days and lasted only a very short time. And subsequent to that they were always allowed a half hour the same as all of the other employees.

Q. And is that true during the period covered by these complaints? A. Yes, sir.

Q. And during that half hour period were the safety engineers required to be on duty and subject to call, or were they free to use that period as they saw fit?

A. They were free to use that period as they wished either within or without the plant site.

Q. Were they permitted to leave the plant site during that half hour period; if they so desired? A. Yes, sir.

Q. And occasionally some employee did?  
[fol. 1271] A. That is right.

Q. But the most of them stayed in the plant and ate in the company cafeterias? A. Yes, sir.

Q. Now Mr. Miller, when we examine the time-cards we see that on some of these cards employees punched in just a few minutes before the beginning of their shift, one or two, or three or five minutes before. Another employee during the same time may have punched in his card 30

or 40 or 50 minutes before. Now can you tell us why that discrepancy?

A. Yes, sir. At the beginning of any one of the three shifts employees in departments would start arriving at the plant anywhere from a half an hour or an hour before the beginning of the shift.

Q. Why?

A. They did that primarily on account of transportation. By coming in early on buses they were sure of getting bus seats. They came in connection with our car pool, and perhaps the driver or some other employee actually worked early. They came in early, and we had several thousands of those who did that every day. With the hourly rated employee they were not permitted to ring the time-card more than 15 minutes before they were required to start the shift. That wasn't true, however, with salaried employees who might ring their cards at any time they wished.

Q. Now, was there any requirement that any of these [fol. 1272] salaried, and particularly the plaintiffs in this case, should report to work before either the beginning of the 8-hour shift in the later period, or before 30 minutes prior to the beginning of an 8-hour shift in the early period? A. No, there was not.

Q. So that if an employee did report and ring in 10 or 20, or 30 or 40 minutes before, he did it of his own volition and not because of any requirement of the company?

A. That is right, yes, sir.

Q. Now Mr. Miller, I see that there is some variation in the time at which the employee punched out. An employee on one day, for example, may punch out at 4 o'clock, and next Monday 4:01, and next day 4:22. Why would there be that variation?

A. Well, after the end of the shift, an employee ringing out several minutes or longer after the end of the shift would do so only because he was finishing out some job that he had been doing. It would be in most cases voluntary on his part. There would be no requirement that he remain after that period.

Q. Although there might be occasions where an individual employee would be required to stay over for some special job? A. Very few, in very rare cases, yes, sir.

Q. Now Mr. Miller, calling your attention to some typical time-cards, I will show you first Defendant's Exhibit 15.

Note

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[fol. 1275] Q. Mr. Miller, I will show you a paper which has been identified as "Defendant's Exhibit 15", and ask you what that is?

A. This is a weekly time-card of one of the claimants, A. C. Kropp, for the period ending February 7, 1943.

Q. Is that one of the cards which was brought in pursuant to subpoena of Judge Bond? A. Yes, sir, it is.

Q. Calling your attention to that card and to Monday of the week in question, I believe that shows that that particular plaintiff punched in at 7:22 A. M.

Mr. Bond: Object to his leading the witness, Your Honor. Let the witness state.

Q. I direct your attention to Monday and ask you at what hour the card shows he punched in?

A. Punched in at 7:22 A. M.

Q. When did he punch out? A. 5:11 P. M.

Q. And at that time when did his shift start? A. 7:30.

Q. And when did it end? A. Four.

Q. And he had a half hour period off for lunch, I believe you testified to? A. Yes, sir.

Q. Now, how many hours are shown on that time-card in pencil, being the number of hours put in that day?

A. For that date 9-1/10.

[fol. 1276] Q. Can you tell me how that figure was arrived at?

A. Well, starting at 7:30, deducting the half hour allowed for lunch, figuring up to five o'clock would be nine hours. He rang out at 11 minutes after five. These minutes are computed on the nearest completed tenth of an hour, or every six minutes. So he is allowed time for the six minutes beyond five o'clock and the five additional minutes are disregarded as well as the eight minutes ringing in before the beginning of the shift, that is also disregarded, and the nine and one-tenth hours are shown being the time from 7:30 to 5:06, less the half hour lunch period.

Q. Now, let me call your attention to Defendant's Exhibit 16, and ask you what that is?

A. That is a weekly time-card of one of the complainants, B. J. Ludwig, for the period ending 2/7/43.

Q. I direct your attention to Wednesday of that week,

and will you tell us when the card says that claimant punched in? A. It says he punched in at 7:08 A. M.

Q. And when did he punch out?

A. He punched out at 4:31 P. M.

Q. Four thirty-one? A. Yes, sir.

Q. I show you 4:45. A. 4:45 was Tuesday.

[fol. 1277] Q. Well, let me direct your attention to Tuesday. My letter was wrong. Let me direct your attention to Tuesday of that week. He punched in at 7:08 A. M.? A. Yes, sir.

Q. When did he punch out? A. Punched out at 4:45.

Q. And that means he punched in 22 minutes before his shift started, and punched out 45 minutes after the shift ended?

A. I think his shift started at 7:15 during this entire week.

Mr. Bond: This shift started at 7:15? A. Yes, sir.

Q. Then can you tell me how you arrived at the pencil figure there for the number of hours?

A. Arrived at it by disregarding the minutes that he rang in between 7:08 and 7:15, if that was his regular starting time, which it appears to be. Figuring all of the time from 7:15 to 4:45; minus a half hour for lunch, would be 9 hours.

Q. He actually was given credit for nine and one-tenth hours?

A. The card shows nine and one-tenth hours, yes, sir.

Q. That would seem to indicate he was given credit for part of that time before his shift started? A. Yes, sir.

Q. And his shift actually started at 7:30?

A. Apparently his shift started at 7:15. That is the indication here. But he was given credit for time prior to that. He rang in at 7:08.

Q. What is the indication that his shift started at 7:15?

A. Well, the indication is that actually he rang in prior to 7:15 on every day except the first day. Also he rang out at 4:45. Rather on Tuesday and out Tuesday, and at 4:30 on the two following days. So it just appears he started at 7:15 during that week.

Q. If his shift started at 7:30 on that day and he was allowed the 22 minutes before his shift started, and the

45 minutes after the shift started, making a total of 67 minutes computed to the nearest one-tenth of an hour, you would get the total shown on the card nine and one-tenth hours for that day, wouldn't you?

A. Yes, sir, if you allow him every minute from the time he rang in until the time he left.

Q. And that is the figure that is shown, isn't it?

A. Yes, sir.

Q. Mr. Miller, can you testify; or should I ask this question of Mr. Kelley of the pay roll department? With reference to the method of computing the pencil figures shown on the two cards which you have in your hand, and all other time-cards, during the period in question?

A. I think Mr. Kelley would have to give you that testimony.

[fol. 1279] Mr. McRoberts: Well, I will ask him about this then instead of you.

Q. Mr. Miller, why did you keep these time-cards and compute the time as you did in pencil for salaried employees? For what purpose were those computations and records made?

A. Those computations were made for the reason that a policy was established that a salary, monthly salaried employees, might be permitted up to two weeks sick leave per year, without special approval of the management. The policy further was that any sick leave in addition to that might receive special consideration only with the approval of the management. The purpose of making these pencil computations on the time-cards was not for the purpose of paying these employees but for the purpose of keeping a record of their absenteeism or loss of time in any one day or any one week.

Mr. Bond: Are not these pencil memorandums the time keeper's memorandums?

A. They are the pay roll department's.

Mr. Bonds: They are not your memorandum?

A. No, sir.

Mr. Bond: I ask all this testimony be stricken. He didn't make them. The man who made them ought to tell why he made them.

Q. (Mr. McRoberts) Do you know what the policy of the company was in requiring these to be kept, and what [fol. 1280] they were kept for? A. Yes, sir.

The Court: How do you know it?

A. I helped set the policy.

The Court: Objection overruled.

Q. Now Mr. Miller, for what other purpose were those records kept and used?

A. Well, they were kept for this reason: Any employee working less than the regular time of 40 hours per week could do one of two things: with the approval of his supervisor he might be paid for any time lost due to illness or any other reason, which is approved; and that was set up by the use of a special form for that purpose. In other words, the employee could apply for pay during sickness or absence. Employees signed it and submitted it to their immediate superior who also signed it, if he so approved, and then forwarded it to the management for approval and payment by the pay roll department.

Q. Then do I understand that if an employee according to these records was shown to have put in less than 40 hours in any particular week, there would be a deduction from his salary for that week?

A. Unless the employee asked for payment, submitted the reason and had it approved by his superior and the management.

Q. Now Mr. Miller, I have during plaintiffs' case offered some little slips called "Applications for pay of a salaried employee." A. Yes, sir.

[fol. 1281] Q. Which at that time were offered for a different purpose and were rejected? A. Yes, sir.

Q. Are those papers to which you refer the applications to which you referred? A. That is right, yes, sir.

Q. So that if a man only worked 30 hours in a particular week but his employer, his supervisor approved his absence--

Mr. Bond: Object to his testifying, Your Honor. Let him ask the witness.

The Court: Sustained.

Q. If an employee according to his records was shown to have worked less than 40 hours per week, what was the option given to him? Will you state?

A. Yes, sir.<sup>5</sup> The employee then had the privilege of requesting his supervisor to issue a slip authorizing the payment of salary for his absence. The form after being filled out required the signature of the employee stating the amount of time for which he was requesting pay and usually—always the reason for his absence. The employee signed it, and then it was turned over to his supervisor for his signature, with a statement by the supervisor that he recommended the payment for this time. It was then forwarded to the head of the department for his approval before they paid.

Q. And if he approved he got payment? A. Yes, sir.

[fol. 1282] Mr. Bond: You mean he would be docked for the number of hours worked if less than forty, and if he didn't request pay and submit a reason for his absence, if he didn't follow that procedure there would be a deduction made at the end of the pay period at his regular hourly rate for the number of hours he worked less than forty?

Mr. McRoberts: Object to that "at his regular hourly rate." It assumes facts not in evidence and calls for an opinion.

Mr. Bond: I am asking this witness.

Mr. McRoberts: May I suggest you do that on cross examination?

The Court: Sustained.

Q. Mr. Miller, if the employee did not make application for payment and get approval for the payment, there would be a deduction from his pay? A. Yes, sir.

Q. How would that deduction be computed?

A. I couldn't tell you that.

Q. Who can tell me that? Mr. Kelley's pay roll department? A. Mr. Kelley can tell you that.

Q. Now suppose an employee's time where he was regularly working an 8-hour shift, less a half an hour for lunch, would show at the end of the week only 42, 43 or 45 hours instead of a whole 48, what would happen?

[fol. 1283] A. Nothing. He would be paid in full.

Q. And the only time that any deduction would be made would be when the records kept and as shown by

these time-cards would indicate less than 40 hours. And there would be no approval given for that shortage?

A. That is right.

Q. Were those safety engineers subject to call for special service beyond the regular shifts?

A. They were subject to call 24 hours a day, seven days a week.

Q. And by that you mean in the event of emergency?

A. That is right.

Q. Or some special— A. Emergency or disaster.

Q. There was some testimony about special clothing and the requirement that that be changed and not worn home. Will you tell us what the facts are with respect to the uniforms or special clothing of safety engineers?

A. All of the safety engineers wore a uniform. They were required to wear a uniform. All of the safety engineers with the exception of a very few were permitted to wear those uniforms out of the plant and to wear them home, if they so desired. The only exception would apply to three or four men who would be doing the job of safety engineer in the major restricted areas.

[fol. 1284] Q. What do you mean by restricted areas?

A. I mean by that what we call our hazardous area where we manufactured the mixture that went into the primers, for instance. Those were called hazardous areas, and employees there had to wear a special uniform which they couldn't wear out of that area. They were required to change there.

Q. Did the other safety engineers, with the exception of those few, have the option of wearing their uniform home, or not? A. Yes, sir.

Q. Did any of them wear them home? A. Most of them.

Q. So that there was no requirement that they come in early to change uniforms? A. That is right.

Mr. McRoberts: Now, if Your Honor please, I want to go on and have this witness testify in some detail with respect to the duties of a number of these individual plaintiffs, who are of a special nature, other than the ones who have testified, certain supervisory employees, and things of that sort; but it may be rather lengthy and I am wondering if you want me to go ahead with this now?

Mr. Bond: It will be agreeable to me if you want to adjourn.

The Court: I haven't anything on the docket for tomorrow.

[fol. 1285] Mr. Bond: It is satisfactory to me.

The Court: Announce an adjournment until tomorrow morning at ten o'clock.

Thereupon, at 4:05 P. M., July 10, 1946, an adjournment was taken to 10 A. M., July 11, 1946. The proceedings were then resumed as follows:

The Court: You may proceed with the case on trial.

Q. (Mr. McRoberts) Mr. Miller, did you at my request since you left the witness stand yesterday afternoon make some further check with reference to the time when the safety engineers ceased to be required to report a half hour before the production shift, and changed over to report at the time of the production shift? A. Yes, sir.

Q. Have you checked back through some of the time-cards themselves and other records of the plant to find out when that took place? A. I have.

Q. Approximately when was that?

A. Approximately beginning the 4th of October, 1943, up to the end of October, 1943. It varied with different men.

Q. In other words, the change-over did not take place uniformly?

A. No; it took place with each man as that man was transferred over under the jurisdiction of the production supervision in the units.

[fol. 1286] The Court: That is when the safety engineers, after that time, were no longer required to report ahead of time? A. That is right.

Mr. Bond: But I do not quite understand from the beginning.

Mr. McRoberts: I will clarify for Judge Bond, if you don't mind.

Q. Now then, your testimony yesterday with respect to a date of sometime in March, 1943, is incorrect?

A. That is right.

Q. And they continued reporting one-half hour ahead of the production shift through the year 1943 from the beginning until the month of October, 1943?

A. That is right.

Q. Thereafter and up until the close of the plant, they reported on the even hour along with the production shifts?

A. That is right, along with the shift in which they worked.

Q. Mr. Miller, there has been some testimony with reference to recommendations made from time to time by safety engineers regarding disciplinary action, or regarding transfers to different types of work because of injuries and physical and mental characteristics of the individual, and that type of thing. Will you tell us what weight was usually accorded to recommendations of that character?

Mr. Bond: Object. It calls for an opinion and conclusion [fol. 1287] of the witness.

The Court: He may answer subject to the objection.

A. Every recommendation of the safety engineer was given full consideration, and in most cases, in a very great majority of cases, these recommendations were carried out. We had a placement department under my supervision in the personnel division for that specific purpose. Originally the safety engineer making the recommendations had to use his own discretion and his own judgment as to whether he would or would not recommend action. If he recommended action it came, that recommendation came directly to me in my department and was handled with the other interested department heads, and in most cases these changes were made.

The Court: He used his own discretion to make a recommendation? A. Yes, sir.

The Court: But he had no authority?

A. Yes, sir, he did, yes, sir.

Q. (Mr. McRoberts) He had no authority to make the change itself, it was nothing but a recommendation?

A. Yes, sir, that is correct.

Q. One other point of a general nature, Mr. Miller. To what extent were members of the armed forces of the United States and employees and agents of the War Department or other branches of the Government of [fol. 1288] the United States located in the St. Louis Ordnance plant either full time or part time?

Mr. Bond: Object as immaterial.

Q. Mr. Miller, were officers of the United States Army and other members of the United States Army forces and other employees and representatives of the United States Government stationed either full or part time in the St. Louis Ordnance Plant?

Mr. Bond: Object as immaterial.

Mr. McRoberts: I am offering it, Your Honor please, to show relationship of the United States Government to the operations here, and that the members of the United States Government were always present not only in the office but throughout the office. It bears upon the question whether these goods are being produced in interstate commerce, and bears upon the question of the definition of goods as excluding goods which did not come in there.

The Court: He may answer subject to the objection.

A. The Ordnance Department—

Q. The question calls for a Yes or No answer.

A. Yes, sir, they were.

Q. Will you tell us to what extent those representatives of the Government were in that plant?

Mr. Bond: Your Honor please, may the record show my objection to all this line of testimony as incompetent, irrelevant and immaterial to the points to which he said it was addressed.

[fol. 1289] The Court: Yes, sir.

A. The Ordnance Department had stationed at the St. Louis Ordnance Plant a commanding officer who was in complete charge of the St. Louis Ordnance Plant. Under him he had a group of ordnance employees totalling up to approximately two thousand. Those were production in-

spectors, safety inspectors, there was an officer of the Army who was in charge of Ordnance Safety and Security with whom I had direct contact, and many of our safety engineers had direct contact. In addition to that, other branches of the armed forces and Ordnance came into the plant constantly. The Safety and Security Division in Chicago issued many regulations and recommendations, and sent safety engineers, military forces, in to the plant to make safety audits and safety check-ups as to whether we were or were not complying with the regulations and recommendations. They also had safety engineers of their own stationed throughout all of the production buildings and other units of the plant.

Q. In addition to safety matters, Mr. Miller, did they have representatives of various branches of the Government, or more particularly of the Ordnance Department, out in the plant? For example, checking the receipt of goods? A. They did, yes, sir, always.

Q. Were all goods checked into the plant by a representative of the Government? A. Yes, sir.

[fol. 1290] Q. Then throughout the manufacturing operations representatives of the Government, were they present and watching and directing and inspecting what was being done?

Mr. Bond: Just a moment. That is calling for a conclusion.

Q. Tell us what they were doing?

The Court: He may answer subject to the objection,

A. They were present through every phase of the operation. They were checking, they were inspecting, and they were rejecting and they were advising us what material we could or could not use, and what it could be used for.

Q. And then after the manufacturing operations were completed did they have representatives of the Government in the plant telling you what should be done with the finished product? A. Yes, sir.

Q. Was there any part of this plant to which representatives of the United States Government didn't have access?

A. There was no part to which they didn't have access.

Q. Now Mr. Miller, referring to the plaintiff William

Francis O'Meara, will you tell us what his duties were as an employee of the defendant?

A. Mr. O'Meara was employed as a safety engineer and worked as a safety engineer from May 2, 1942, until June 19, 1943. His duties—

Q. I am not going to [——] into that for a moment. Let me direct your attention specifically on or about June 19, 1943, [fol. 1291] were his duties changed? A. Yes, sir, they were.

Q. And what did he become at that time?

A. He became one of the assistants to the chief safety engineer.

Q. And referring back to the organization chart, Defendant's Exhibit 10, where would his position be on that chart beginning as of that time?

A. He was in full and complete charge of the fourth section, shown here.

Q. And that is the section designated Education Statistics Record and Safety Stores?

A. Yes, sir, also the laundry, which I believe is shown in the next section.

Q. Now, in that capacity what were his duties in that capacity?

Mr. Bond: Just a moment. May I question the witness on the source of his knowledge?

The Court: Yes, sir.

Mr. Bond: Where did you get your information as to what his duties were?

A. Because I was in charge of what he did. I was in charge of the employment, productions, assignments, job classifications. I determined the salary that he was to be paid, the duties that he was to do, and his location in the plant.

Q. Were not his duties prescribed by the chief engineer? [fol. 1292] A. Under my jurisdiction, yes, sir.

Mr. Bond: And the chief engineer reported to you?

A. That is right.

Mr. Bond: You had no contact with the safety department except through the chief engineer?

A. No, sir, I had constant contact with the safety department.

Mr. Bond: Where did you get your knowledge of what he did? A. What he was told to do.

Q. (Mr. McRoberts) I will reframe my question. Will you tell us what he was supposed to do according to the authority that you gave to that job.

Mr. Bond: They speak for themselves, I object, a conclusion.

The Court: Overruled.

A. Mr. O'Meara was assigned as assistant staff supervisor being an immediate assistant to the chief safety engineer in charge of these two subsections of the safety department. When the form changed his classification was approved by me, his salary was approved by me; he was put on the job, made weekly reports as being in charge of these two sections, and all of his weekly reports came to me and are in my file.

Q. When you say being in charge of these departments, tell us more specifically what being in charge of these departments meant. A. Those are rather large departments. [fol. 1293] Q. Approximately how many employees would be under him?

A. Approximately 80 employees covering a three-shift operation.

Q. And what was his relationship to these employees under him? A. He was in direct charge of all of them.

Q. And did he give them orders and directions?

A. He gave them orders and directions as to the operation, the complete operation on a three-shift basis of these two sections.

Q. And with the change to that position was there an increase in his salary? A. Yes, sir.

Q. From what, to what?

A. His salary was increased at the time of the change from \$250 a month to \$275 a month.

Q. Did he retain that position and perform those duties up until the time he ceased to be an employee?

A. Yes, sir, he did.

Q. Was he thereafter given a further increase or continue to work in the same duties? A. Yes, sir.

Q. The subsequent increase was to \$299 per month, October 11, 1943? A. Yes, sir.

Q. Do you have, Mr. Miller, a statement signed by Mr. [fol. 1294] O'Meara which contains a statement as to what his duties were? A. Yes, sir.

Mr. Bond: May I see it?

Mr. McRoberts: Let me identify it "Defendant's Exhibit 17".

(The paper was handed to Plaintiffs' Counsel.)

Q. While Judge Bond is examining that let me ask you another question: In directing the activities of these same 80 men under him, was Mr. O'Meara required to do the same type of work that these men under him were doing, or were his duties confined to supervision?

A. His duties were confined entirely to supervision.

Mr. Bond: Go ahead.

Q. Mr. Miller, is this Defendant's Exhibit 17 the statement to which you referred? A. It is.

Q. And what was the occasion for the making of that statement.

A. The occasion for the making of the statement was a fire which occurred in the safety engineer headquarters during the absence of both the chief safety engineer and his first assistant chief safety engineer.

Q. In connection with the investigation and reporting.

Mr. Bond: Let the witness answer, will you please?

A. In connection with the investigation in regard to this fire Mr. O'Meara wrote out and signed this statement [fol. 1295] and gave it to us.

Mr. McRoberts: I offer in evidence Defendant's Exhibit 17—Is that Mr. O'Meara's signature attached to that statement? A. It is.

Q. And that is a part of the company's files and records? A. That is right.

Mr. Bond: Does it bear a date?

Mr. McRoberts: Bears the date 1/19/43.

Q. I call your attention to the fact, Mr. Miller, were those dated prior to the time he was appointed assistant staff supervisor? A. Yes, sir.

Q. And then this would describe rather his duties as of the date of this statement? A. That is right.

Mr. McRoberts: I offer in evidence Defendant's Exhibit 17 and direct the Court's attention simply to this sentence: "This is to certify that I, William F. O'Meara, 41 years of age, am employed as a supervising safety engineer at the St. Louis Ordnance Plant by the United States Cartridge Company. In this capacity I have supervision over the safety engineers on duty throughout the plant on the 8 A. M. to 4 P. M. shift. I am working under the immediate supervision of Mr. Jack Sewell, general safety engineer. [fol. 1296] It is my duty to keep in constant contact with the safety engineers and pass judgment on any problems which come up." And thereafter it describes the particular incident in question.

[fol. 1297] (Defendant's Exhibit 17.)

Statement.

This is to certify that I, William F. O'Mara, 41 years of age, am employed as a Supervising Safety Engineer at the St. Louis Ordnance Plant, by the United States Cartridge Company. In this capacity, I have supervision over the Safety Engineers on duty throughout the Plant on the 8:00 AM to 4:00 PM shift. I am working under the immediate supervision of Mr. Jack Sewell, General Safety Engineer.

*It is my duty to keep in constant contact with the Safety Engineers and pass judgment on any problems which come up.* On Saturday, January 16, I was operating in this capacity and at about 11:45 AM, I had occasion to visit the Men's Wash Room in the basement of Building #222B for a few minutes before going to lunch. I passed the Fan Room where a fire broke out a short time later. I did not notice anything unusual, as it is my recollection that the door to said Fan Room was closed.

The first knowledge that I had of a fire was when advised by Mr. Jack Sewell when we were at lunch in Building #101. We left immediately to investigate the fire and in as much as Mr. Sewell was present, I assumed my regular duties.

/s/ W. F. O'MARA.

WFO'M:ws-fr

1/19/43

[fol. 1298] Q. Now Mr. Miller, does that so far as it goes correctly describe the duties of Mr. O'Meara in January, 1943? A. That is right, yes, sir.

Q. And did he continue to perform those same duties until he was promoted to assistant staff supervisor June 19, 1943? A. Yes, sir, he did.

Mr. Bond: On that date he was supervising safety engineer, was he not? A. That is right.

Mr. McRoberts: That is correct.

Q. Now Mr. Miller, directing your attention to Mr. Trimble, L. W. Trimble, one of the plaintiffs in this case, he was first employed I believe on March 25, 1942? A. Yes, sir.

Q. And in what capacity?

A. He was employed on that date as an instructor and always remained an instructor. He was never a safety engineer.

Q. He carried the pay and code number of a safety engineer, did he not? A. That is right.

Q. What duties did he perform?

A. He instructed the safety engineers and all other supervision that was employed at the plant.

Q. He instructed not only safety engineers but instructed [fol. 1299] supervision? A. Yes, sir.

Q. In what matters? A. In safety, particularly First aid.

Q. Mr. Elmer Clayton Maher is one of the plaintiffs in the case, I believe? Do you have in your files a statement signed by Mr. Maher in which some reference is made to the nature of his duties? A. I have, yes, sir.

(A paper is marked "Defendant's Exhibit 18")

Q. I will show you Defendant's 18 and ask you if that is a statement that you refer to? A. It is.

Q. And is that Mr. Maher's signature? A. Yes, sir.

Q. And what was the occasion of the making of that statement?

A. This was the same investigation of the same fire in which Mr. O'Meara gave his statement.

Q. And this is part of the official records of the company? A. Yes, sir.

Mr. Bond: May I see it, please?

(The paper is passed to Plaintiffs' Counsel)

Mr. Bond: Go ahead.

Q. And I direct your attention to the date on that report. Is that the same one, 1943?

[fol. 1300] A. Yes, sir; 1943.

Q. And does that document insofar as it goes correctly describe the duties of Mr. Maher at that time?

A. Yes, sir.

Mr. McRoberts: We offer in evidence Defendant's Exhibit 18, and I direct the Court's attention to these statements:

"This is to certify that I, Elmer C. Maher, am employed at the St. Louis Ordnance Plant by the United States Cartridge Company in the capacity of supervising safety engineer. My duties consist of the immediate supervision of the safety engineers of this particular shift upon which I am working, and I report to Mr. Jack Sewell, General Safety Engineer."

[fol. 1301] (Defendant's Exhibit 18.)

#### Statement.

This is to certify that I, Elmer C. Maher, am employed at the St. Louis Ordnance Plant by the United States Cartridge Company in the capacity of a Supervising Safety Engineer. My duties consist of the immediate supervision of the Safety Engineers of the particular shift upon which I am working, and I report to Mr. Jack Sewell, General Safety Engineer.

From January 7, 1943, to January 18, inclusive, I was working on a special assignment. This assignment provided that I represent the Company during a safety audit, and that I accompany Mr. Jensen, Ordnance Safety Auditor, on a safety inspection tour of both Plants #1 and #2.

I was so engaged on January 15th and 16th. While I was on this assignment, I was available to Mr. Jack Sewell at all times and could easily be summoned by means of the Auto Call.

/s/ E. G. MAHER.

CEM:ws-fr

1/19/43

[fol. 1302] Q. At that time was Mr. Maher's duties the same as Mr. O'Meara's? A. Yes, sir.

Q. And did he continue to have those duties up until June 7, 1943? A. He did.

Q. And will you describe a little more specifically than is shown in either Defendant's Exhibits 17 or 18 the duties of a supervising safety engineer?

A. The supervising safety engineer has supervision and authority over all of the safety engineers, plantwide, on his shift. Safety engineers report to him. He is responsible for their assignments. He is also called upon and required to use his own judgment in handling any situation which may be referred to him by any safety engineer under his supervision.

Q. Mr. Miller, about how many men would be under a supervising safety engineer on a shift?

A. Oh, probably about thirty.

The Court: Would a supervising safety engineer have authority to correct any infraction and give orders?

A. No, sir. He would have authority to contact the supervisor of any other department.

The Court: And make recommendations?

A. And request corrections.

Q. (Mr. McRoberts) Mr. Miller, would a supervising [fol. 1303] safety engineer have authority to stop operations in the event of emergency or apparent extreme hazard, or immediate danger to life or limb?

A. Yes, sir.

Q. Other than that his duties would be solely to make recommendations and requests?

A. Well, excepting he was held responsible for seeing that his recommendations were followed to a conclusion either to a correction or a decision not to make the correction.

Q. But he had no authority to actually make the corrections himself, except in that one instance?

A. That is right.

Q. In that connection you say there were about how many on a shift? A. About thirty.

Q. And that would be approximately 90 in a 24-hour day? A. Yes, sir.

Q. How large was this safety department?

A. Approximately 100 safety engineers maximum working at any one time with a total number of employees in a safety department of about 380. There were a few more safety engineers working on the day shift than there were on either of the other two shifts.

Q. Now coming up to June 7, 1943, were the duties of Mr. Maher changed at that time? A. Yes, sir.

[fol. 1304] Q. Will you tell us what change was made?

A. Mr. Maher was promoted to assistant staff supervisor and reclassified and given an increase in his salary.

Q. From \$250 to \$275? A. Yes, sir.

Q. And when he became an assistant staff supervisor what were his duties?

A. His duties were to handle all special assignments and to make a check of the corrective action taken on safety practices, both our own and those of the safety office in Chicago, of the Ordnance Department.

Q. Was he assigned to be in immediate charge of any of those departments shown on the organization chart, as Mr. O'Meara was? A. No, sir.

Q. And in performing the duties which you have just described, did he have any men under him?

A. Only if or when he might need them. He didn't normally have any men under him.

Q. He had no group normally assigned to him as Mr. O'Meara did?

A. No, sir, his function was completely roving in nature. It covered the plant.

Q. I call your attention to John William Hirschberger, another of the plaintiffs in this case, and ask you whether [fol. 1305], or not on July 12th, 1943, his duties were changed? A. They were, yes, sir.

Q. And what change was made at that time?

A. At that time he was promoted to assistant staff supervisor.

Q. Let me go back before I forget it. In case of Mr. Maher, did he continue to be an assistant staff supervisor during the balance of his employment with the company?

A. Yes, sir.

Q. Now going back to Mr. Hirschberger, what change was made in his occupation?

A. On July 12, 1943, he was promoted to assistant staff supervisor being one of the assistants to the chief safety engineer.

Q. And the salary was \$300 per month? A. Yes, sir.

Q. Did he continue to hold that position until the termination of his employment with the company?

A. He did.

Q. What were Mr. Hirschberger's duties as assistant staff supervisor?

A. His duties as assistant staff supervisor was to be in full charge under the chief safety engineer of the entire safety department. He only assumed full charge in the absence of the chief safety engineer. He did, however, carry the responsibility and function directly under the chief safety engineer.

[fol. 1306] Q. Where would he appear on this organization chart, Mr. Miller?

A. He would appear in the section box at the top as assistant chief safety engineer over all of the subsections of the safety department.

Q. And he preceded Mr. Bodeker in that position?

A. Yes, sir.

Q. I note from Defendant's Exhibit 10 opposite Mr. Bodeker's name, No. 7344 of 10/8/45. A. Yes, sir.

Q. Does that represent the time when Mr. Bodeker held that position? A. That is right.

Q. And Mr. Hirschberger ceased to be employed by the company in June 24, 1944? Is that correct? A. Yes, sir.

Q. And in performing those duties were they entirely supervisory over the safety department? A. Entirely so.

Q. And covered all of the employees in the safety department except, of course, his superior chief safety engineer? A. Yes, sir.

Q. I call your attention to the plaintiff Alfred Charles Kemp. Is there a change in his status and duties on January 11, 1943? A. Yes, sir.

[fol. 1307] Q. What was that change?

A. That change was a promotion to general supervising safety engineer.

Q. And his salary was increased from \$250 to \$275 a month at that time? A. Yes, sir.

Q. And what were his duties in that position?

A. His duties were roving in nature covering the entire safety department and having supervision over all safety engineers on any special assignments that he might cover.

Q. Can you give us a little more information about that, as to how he functioned and what he was supposed to do?

A. In that capacity he functioned directly under the assistant chief safety engineer of the department. He had no particular assignment in any building, but investigated or checked or handled with the safety engineers any special case or special occasion which might come up in any unit.

Q. Could you give us an example of that?

A. An example would be any complaint by a safety engineer anywhere in the plant that any supervisor was failing to take corrective action. It would be a complaint that we might receive from the safety and security division in Chicago that corrective action or the proper safeguards were not being taken anywhere in the plant. Anything of that nature where the safety engineer on the job needed some more weight to get the corrective action taken.

[fol. 1308] Q. And did he continue in that capacity receiving another increase to \$300 a month on April 16, 1943?

A. Yes, sir.

Q. Until October 4, 1943? A. Yes, sir.

Q. And what change was made at that time?

A. October 4, 1943, he was made assistant staff supervisor.

Q. And what were his duties as assistant staff supervisor?

A. His duties at that time were special assignments inside of and outside of the plant.

Q. How did they differ from his duties under this previous title?

A. They didn't differ particularly except that on receiving the appointment his assistant staff supervisor gave him full authority directly under the chief safety engineer, and he had authority then over any of these subsections which are shown in the chart.

Q. That is, any of these subsections occurring the third line from the top? A. Yes, sir.

Q. Did he continue to hold that position and perform those duties until his employment was terminated?

A. He did, yes, sir.

Q. Mr. Miller, Mr. Kemp was first employed by the company on December 31, 1941, wasn't he?

[fol. 1309] A. That is right, yes, sir.

Q. Was that in the safety department? A. Yes, sir.

Q. ~~I~~ see the word "guard lieutenant." Is that title for some occupation in the safety department?

A. No, it isn't. He was hired as a safety engineer on that date.

Q. Now calling your attention to Mr. Yancey, another of the plaintiffs, when was he first employed by the company? A. July 3, 1942.

Q. In what capacity? A. As an adjuster trainee.

Q. And was he on a salary or an hourly basis?

A. An hourly rate.

Q. Of 62 cents per hour? A. Yes, sir.

Q. And adjuster trainee, an adjuster trainee is a man who adjusts machines out there to make them operate?

A. Yes, sir.

Q. That has nothing to do with the safety department, does it? A. No, sir.

Q. That is one of the production jobs?

A. Well, the trainee is in school for eight to twelve weeks.

Q. And then he was transferred to what?

[fol. 1310] A. He was transferred from there to an adjuster, and later in July he was transferred to a fireman.

Q. Still on an hourly basis? A. Yes, sir.

Q. Did he continue on an hourly basis until December 11, 1942? A. Yes, sir.

Q. And during all the time from July 3, 1942, to December 11, 1942, he was paid on an hourly basis?

A. That is right.

Q. And on an hourly basis would he be paid overtime for any work in excess of 40 hours per week? A. Yes, sir.

Q. And he first went on a salary basis on what date?

A. On December 11, 1942.

Q. Now coming down to October 10, 1943, was there a change in his duties at that time?

A. There was not any change in his duties, no, sir. He functioned as a fire inspector from December 11, 1942, to November 1, 1943; as a fire inspector he had special assignments throughout the entire plant.

Q. What do you mean by "special assignments"?

A. Investigating fires.

Q. And making reports on them?

A. Making reports and recommending and securing corrective action.

[fol. 1311] Q. Thereafter what change was made on November 1, 1943?

A. On November 1, 1943, he was promoted to a supervising safety engineer.

Q. And his salary was increased?

A. Yes, sir, from \$225 to \$279.

Q. And what were his duties in that capacity?

A. In that capacity he was assigned to two—one production unit and later transferred over to another production unit when the whole building with all of its employees was changed over, and he was the supervising safety engineer in charge of the whole building. In other words, he supervised the other two safety engineers who worked on other shifts. He reported directly to the superintendent and the two men under him, but he himself was particularly held accountable for the safety supervision of the production supervisors in the building.

Q. Do I understand that he would actually work one shift himself and be in charge of the other two men on the other two shifts?

A. He did on one shift and supervised the other two shifts.

Q. And while he was on duty would there be a safety engineer under him, or not? A. No, sir, not on that shift.

Q. Do you use the term safety engineer and safety inspector interchangeably? A. Yes, sir.

[fol. 1312] Q. There is no difference except in the name?

A. That is right.

Q. And did he continue to perform those duties until his employment was terminated? A. He did, yes, sir.

Q. I call your attention to Guy Herman Bentiné, one of the plaintiffs in this case. Was there a change in his duties on February 12, 1945?

A. There was a change in his duties prior to that, on October 4, 1943.

Q. What duties did he assume at that time?

A. He became at that time supervising safety engineer in the *Tale and Gauge Building*.

Q. And what were his duties as such?

A. His duties there as such were that he was in complete charge of the safety for the building and supervised the safety engineers on the other shifts.

Q. Was there a subsequent change in his duties?

A. Yes, sir.

Q. When did that occur?

A. On February 12, 1945, he was transferred from a supervising safety engineer to an hourly rated job.

Q. And continued on the hourly rated job until what time?

A. Continued on that hourly rated job; which was a Class C Tool Inspector, from February 12, 1945, to February 27, 1945.

[fol. 1313] Q. While he was on an hourly rated job he was paid for any overtime in excess of 40 hours per week?

A. Yes, sir.

Q. And what occurred on 2/27/45?

A. On February 27, 1945, he was transferred back to the safety department as an assistant supervisor, being secretary of the safety committees.

Q. What were his duties?

A. His duties were to hold meetings and interview all interested parties as to when meetings would be held, and the date and so forth. He acted as chairman of the meeting, wrote up minutes after the meeting and took the mat-

ters which were brought up at those safety committees and discussed them with the interested parties both in our own division and in the other divisions of the company.

Q. What were the meetings for? What occurred at them?

A. The meetings were for the purpose of discussing the violations or infractions which may have caused accidents, and in also discussing any possible preventive or corrective action. And he also discussed and called to the attention of all those attending, various safety bulletins and safety matters. We received all safety material from the National Safety Council. We received all Ordnance regulations which were promulgated in regard to safety, and we received regulations and bulletins from the Safety & [fol. 1314] Security Division in Chicago. All of those which pertained to operations performed at the plant were discussed in those safety meetings.

Q. Did he continue to perform those duties until his employment was terminated? A. He did, yes, sir.

Q. Directing your attention to the plaintiff Benton Joseph Ludwig, he was employed by the company June 16, 1941? A. Yes, sir.

Q. And he was first employed in a different capacity than had nothing to do with the safety engineer department? Is that correct? A. That is correct.

Q. On March 2, 1942, was he transferred or were his duties changed?

A. On March 2, 1942, he was transferred at his request to a safety engineer.

Q. On October 25, 1943 was there a change in his duties?

A. Yes, sir.

Q. What was that change?

A. He was transferred at that time to a supervising safety engineer with miscellaneous assignments in buildings in two of our 50 calibre production buildings, checking and handling of safety and security and ordnance audits.

Q. What is a safety and security audit, Mr. Miller?

A. Safety and security audit is an audit that is made by [fol. 1315] an engineer from the Ordnance Safety and Security Division in Chicago, the audit being made by that engineer accompanied by one of our own safety engineers. And the purpose of the audit, of course, is to bring about safe conditions and safe practices in the plant. The Safety

and Security Division started a safety contest of all ordnance munition plants in 1943 and made these audits periodically in connection with that test.

Q. And he received a wage increase or salary increase in connection with the promotion? A. Yes, sir.

Q. Is there anything else you can tell us about his duties other than what you have already told us? A. No, sir.

Q. Did he continue to perform those duties until his employment was terminated? A. That is right.

Q. Calling your attention to plaintiff William Victor Stutz, he was first employed on June 7, 1943? A. Yes, sir.

Q. And what were his duties? What was his title and what were his duties?

A. He was employed as an assistant staff supervisor at that time. He was never a safety engineer. His duties were from that time until the time of his termination, special and supervisory assignments.

Q. Give us a little more specifically what they were? [fol. 1316] A. Well, in addition to that he also did some instructing and some teaching in our training functions.

Q. And on those supervisory assignments can you give us just a little bit more information about his duties?

A. Plantwide investigation and follow-ups of the recommendations and reports of the safety engineers.

Q. And would that be the same with the other man where you said he was to help get recommendations carried out?

A. Yes, sir. And he had authority and supervision over any safety engineers in the plant.

Q. I call your attention to Joseph Charles Reeves. Was there a change in his duties on November 1, 1943?

A. Yes, there was a change, prior to that time, of course.

Q. Give me that.

A. He was employed on January 30, 1942.

Q. Well, that is all right in his case, he doesn't claim any hourly time, so we don't have to go into that, Mr. Miller.

A. And there was a change in November, 1943, when he was promoted to a supervising safety engineer.

Q. What were his duties as such? A. He was assigned—

Q. He was to get a wage increase along with that to \$279 a month? A. Yes, sir, that is right.

Q. What were his duties?

[fol. 1317] A. He was assigned to one of the 30 calibre production buildings, being in complete charge of safety in that building and having authority and responsibility over the other safety engineers in the building. And the major portion of his duties were to see that the production supervision and all other supervision carried forward the safety program of the Company.

Q. Did he continue to perform those duties so long as he was employed?

A. No. He performed those duties until March 31, 1944, when that building was shut down and he was laid off.

Q. Then he was reinstated?

A. He was reinstated in the same building at the time when the operations of an ordnance repair depot were carried on in that building.

Q. And what were his duties then?

A. His duties were the same, supervisory safety engineer.

Q. Then did he continue to perform his duties until his employment was finally terminated? A. Yes, sir.

Q. I call your attention to Edwin Lewis Stockho. He was employed by the company March 31, 1942?

A. Yes, sir.

Q. In what capacity?

A. Capacity of an hourly rated inspector.

Q. And did he continue on an hourly paid basis until [fol. 1318] May 25, 1942? A. Yes, sir.

Q. And during the time he was on an hourly paid basis was he paid overtime for all time in excess of 40 hours?

A. Yes, sir.

Q. And was there a change in his duties then on October 25, 1943?

A. Well, there was a further change before that, when he was changed to a salary on May 25, 1942. He continued to receive overtime payments up to November 14, 1942.

Q. In other words, he continued to be paid for all overtime until November 14, 1942? A. Yes, sir.

Q. And then beginning on November 14, 1942, he went on a salary basis? A. That is right.

Q. Thereafter on October 25, 1943, was there a change made in his duties?

A. Yes, sir; he was promoted to a supervising safety engineer.

Q. And what were his duties as such?

A. His duties were roving in nature covering special assignments and safety audits plantwide; reporting directly to the chief safety engineer.

Q. And could you tell us a little more specifically what he did on these roving duties?

[fol. 1319] A. He would again check all recommendations and suggestions of the safety engineers, and as such had supervision over all safety engineers throughout the plant.

Q. And continued as such until his employment was terminated? A. Yes, sir.

Q. Edwin Fred Peters is the same as the plaintiff whose name is given in the petition as S. F. Peters? A. Yes, sir.

Mr. Bond: What did you say his correct name is?

A. Edwin F.

Q. He was first employed by the company on November 16, 1941? A. Yes, sir.

Q. Was that in the safety department? A. No, sir.

Q. What department was he in?

A. That was in the accounting department and Administration Building.

Q. And he continued in that department until November 30, 1942? A. Yes, sir.

Q. On June 21, 1943, was there a change made in his duties? A. Yes, sir.

Q. What was the change?

A. He was promoted to an assistant staff supervisor in [fol. 1320] the safety department with increase of salary to \$275 per month.

Q. What were his duties as assistant staff supervisor?

A. He was in charge of safety engineers in there, sanitation, scrap disposal and burning grounds section of the safety department.

Q. Which of those departments on the third line on the chart was he in charge of?

A. The second and third sanitation, powder disposal.

Q. And approximately how many men did he have under him? A. Approximately 200.

Q. And what was the nature of his duties over them, or with reference to these men? A. He was in charge.

Q. Supervisory duties?

A. Supervisory completely, three shifts.

Q. And how long did he continue in that capacity?

A. Until August 16, 1943.

Q. Then what change was made?

A. Then he was transferred to the Public Relations and Advertising Department.

Q. What were his duties in that department, if you know?

A. He was still an assistant staff supervisor, assisted in gathering and publishing of various information including the printing one newspaper, the "United States Cartridge News."

Q. Was he still connected with the safety department or [fol. 1321] was he specializing in safety news in any way?

A. No, sir.

Q. And how long did he continue in that capacity?

A. Until November 15, 1943.

Q. What happened then?

A. Then he was transferred to the Employment Department.

Q. And what were his duties there?

A. He was an artist, drawing of pictures, window dressing, and so forth, and all other publicity in connection with the employment of additional people.

Q. Did he continue in that capacity until his employment was terminated?

A. No. He was transferred on January 31, 1944, to the personnel service department.

Q. And what were his duties there?

A. His duties there were to handle any complaints, grievances or disorders of any employee.

Q. Did he continue in that capacity until his employment was terminated? A. Yes, sir.

Q. I call your attention to the plaintiff W. B. Niedringhaus. Was there a change made in his duties on October 25, 1943? A. Yes, sir.

Q. And what was the change?

A. He was promoted to supervising safety engineer.

[fol. 1322] Q. With a wage increase to \$279 a month?

A. Yes, sir.

Q. And what were his duties?

A. Report directly to the chief safety engineer, handling roving assignments in all of the production buildings at the plant. He didn't get into the restricted areas.

During that same time he was sent by the company and attended a special safety course in Chicago of six or seven weeks' duration, accompanied by three other men.

Q. And on those roving assignments, what were his duties, a little more specifically?

A. Again his duties—all of these roving assignments on supervising personnel was to pick up where the safety engineer left off and safety engineer's reports. They made recommendations. They couldn't carry them out, they could only recommend for consideration. Supervising engineer then had authority to come in and find out why those recommendations were not carried out and to get some weight behind them to see that it was done.

Q. Were the safety engineers under these roving men?

A. They were not under them in the normal assignments, no, sir; but the roving safety engineer had authority over any safety engineer.

Q. Whenever any specific matter came up involving one safety engineer, he would have authority over that one?

[fol. 1323] A. That is right.

Q. But not over the ordinary every-day activity?

A. That is right.

Q. Did he continue in that capacity until the termination of his employment?

A. Yes, sir—well, he was terminated for military service and then came back.

Q. But when he came back he was working in the same capacity?

A. When he came back he came back in the same capacity. And at that time from May 15, 1944, until September 17, 1945, he was also secretary of the safety committees.

Q. And did he have the same duties as secretary of this safety committee that you described before with reference to one of the other employees? A. That is right.

Q. Were there more than one of the committees?

A. Yes, sir, there were about four of them.

Q. And this termination of the military service was on May 3, 1944? A. Yes, sir.

Q. He was reinstated May 15, 1944? A. Yes, sir.

Q. That was pretty short service?

A. Well, he didn't actually enter service. He had ex-[fol. 1324] pected to and didn't.

The Court: Go back, what date? A. May 15, 1944.

Q. Mr. Miller, I have the name here of Andrew W. Lockhart but do not have information about him. Is he one of the plaintiffs here? A. Yes, sir.

Q. Mr. Miller, referring to Andrew W. Lockhart, one of the plaintiffs in this case, was there a change made in his duties on September 14, 1942? A. Yes, sir.

Q. What was that change?

A. He was transferred from the plant to the Tyson Powder Storage area as supervising safety engineer in charge at the powder farm.

Q. And that powder farm is some thirty or forty miles from St. Louis Ordnance Plant, on Goodfellow Avenue in St. Louis? A. About 28 miles.

Q. Was he in charge of other safety engineers?

A. Yes, sir.

Q. Is he in full charge of all other safety engineers at the Tyson Farm?

A. Yes, sir. Well, there were not more than three safety engineers at Tyson. He was also in charge of the [fol. 1325] fire department there, in the absence of other supervision.

Q. And then what other changes were made in his duties?

A. He was brought back to the plant on 6/7/43 and promoted to assistant staff supervisor.

Q. And what were his duties as such?

A. Again assistant to the chief safety engineer, over all subsections and all employees of the safety department.

Q. Would his position correspond to the position of S. F. Bodeker on this organization chart?

A. No, it would not. You see we had an assistant staff safety engineer in charge of each of these subsections.

Q. And he was then underneath Bodeker but above the third line departments on the chart? A. That is right.

Q. And was he over all of those at the departments or just over some of them?

A. No, sir, he was over all of them except, of course, the two top men.

Q. And had the same duties that you have described with reference to other employees having the same type of position? A. That is right, yes, sir.

Q. And how long did he continue in that capacity?

A. He continued in that capacity until October 4, 1943.

Q. Then what happened to him?

A. Then he was transferred still in the same capacity as assistant staff supervisor to the production control, [fol. 1326] department of production in charge of all the safety.

Q. And very briefly, what were his duties there?

A. His duties there were to make the supervision carry out and abide by the safety regulations and requirements.

Q. And how long did he continue in that position?

A. Until he terminated on March 31, 1945. Then he was reinstated on April 10, 1945, in the safety department.

Q. In what capacity? A. As supervising safety engineer.

Q. With what duties?

A. With special assignments and special investigation throughout the plant.

Q. Similar to those which you have already described for other employees? A. That is right.

Q. And continued in that capacity until terminated?

A. Yes, sir.

Q. I call your attention to Russell Robert Barnett. Was there a change made in his duties on October 25, 1943?

A. Yes, sir.

Q. What was that change?

A. He was promoted to a supervising safety engineer with salary increase to \$279 a month.

Q. With what duties?

A. He was assigned to one thirty caliber building, being [fol. 1327] in charge of building and supervising other safety engineers.

Q. When you speak of a Thirty Calibre Building, will you state for the record about how many employees would it take in one of those productions?

A. Normally in the Thirty Calibre Building about twenty-eight or twenty-nine hundred employees. In 50 Calibre Building normally from thirty-three to thirty-eight hundred employees.

Q. What other changes were made in Mr. Barnett's duties, if any?

A. February 7, 1944, he was transferred from a supervising safety engineer to a safety engineer.

Q. That is a demotion? A. And his salary increased.

Q. Then on February 19, 1945, was there a change?

A. Yes, sir; on February 19, 1945, he was transferred out of the department.

Q. To what duties?

A. To the duties of Plant Coordinator in the maintenance department.

Q. And briefly what were his duties in that capacity?

A. His duties there were to coordinate the need for and request for urgent tools to maintain and prevent production stoppages.

Q. And he continued in that capacity up to the end of his employment? A. Yes, sir.

[fol. 1328] Q. I call your attention to plaintiff Frank Marion Kirshville.

The Court: Announce a five-minute recess.

Thereupon, at 11:25 A. M., July 11, 1946, a brief recess was taken. The proceedings were then resumed as follows:

Q. Mr. Miller, in the case of Mr. Kirshville, was there a change made in his duties on October 4, 1943, or was that not until October 20, 1943?

A. Well, on October 4, 1943, he was transferred from the safety to the production department, still on the same job, however. And October 20, 1943, he was promoted to supervising safety engineer with an increase to \$279 a month.

Q. And what were his duties as supervising safety engineer?

A. Special assignments and special reports and survey of various locations throughout the plant.

Q. The same general character as that of other employees about whom you testified? A. Yes, sir.

Q. And was there any subsequent change in his duties?

A. There was not, no.

Q. Until the termination of his employment?

A. He received another salary increase on April 9th, but no change in duties.

Q. I call your attention to plaintiff Mr. Bateman, Dane Franklin Bateman. Was there any change in his duties [fol. 1329] or did he perform the same duties throughout?

A. He performed the same duties as instructor throughout his employment.

Q. And in what did he instruct?

A. He instructed in safety training in our class-room training.

Q. He was a teacher and instructor of safety engineers?

A. No, sir, not safety engineers.

Q. Of what? A. Of production employees.

Q. Now will you just tell us a little bit more about that work?

A. Well, that was instructor of new employees in safety instruction, and instruction of women at the time they were being promoted, and instruction of gaugers and all various types of instruction of that kind.

Q. Were new production employees given instruction in safety of different kinds and degrees?

A. No, sir, not by the safety department. Only certain classifications were given instruction prior to going to work. They were instructed by their own supervision, and by the safety engineers after going to work.

Q. As a matter of fact, you had a situation where practically all of your employees had had no previous experience in the manufacture of ammunition or handling of [fol. 1330] explosives. Is that the situation?

A. We started with about forty employees who had no experience whatever in making ammunition or in the handling of explosives, and from that forty our employment increased to a maximum of 36,490 people, all of whom had to be trained. And with our turn over there were approximately 93,000 people who received training in safety and in safe handling of explosives during the operation.

Q. I call your attention to Mr. Brace, Clarence Brace. What were his duties?

A. From April 5, 1943, until October 8, 1943, he was a safety engineer with roving assignments all over the plant.

Q. After that, what were his duties?

A. After that he was assigned to the traffic and transportation department as safety engineer.

Q. What were the duties of the safety engineer in the traffic department?

A. His duties there were similar to what they were in the production. That is, to investigate all accidents, conduct our whole powder movements between the farm and the plant. These safety engineers accompanied the drivers or group of drivers. They checked the equipment; and so forth.

Q. I call your attention to Clifford Joe Champion. Was there a change in his duties on September 11, 1943? [fol. 1331]

A. Yes, sir.

Q. And what was that change?

A. That change was from a safety engineer in the traffic and transportation to assistant staff supervisor in charge of all safety in the production and control department.

Q. And where would that be on the organization chart?

A. That is not on the organization chart, that is outside of the safety department. It has to do with the movement of material into and out of the plant, and within the plant.

Q. And he was in charge of all safety engineers working on that type of—

Mr. Bond: Don't lead the witness.

Q. What was he in charge of?

A. He was in charge of all safety engineers who had any supervision over the handling or movement of material and the employees doing that work.

Q. How many safety engineers would that be, approximately? A. About ten.

Q. And did he continue in that capacity until the termination of his employment? A. Yes, sir.

Q. I call your attention to plaintiff, Burkhardt Herbert Hargate. Was there a change in his duties on March 12, 1945?

A. Yes. On March 12, 1945, he was transferred to a supervising safety engineer in the traffic and transportation department.

[fol. 1332] Q. And what were his duties in that capacity?

A. Supervising all of the safety engineers who worked with the traffic department and the transferring of mate-

rial by truck. There was a change prior to that on October 1, 1943, he was transferred from the plant to the Tyson Powder Storage area as safety engineer at Tyson.

Q. Mr. Miller, [your] were referring to Mr. Hargate. He was first employed on January 13, 1942, was he not?

A. Yes, sir.

Q. And he was employed on an hourly rated job as a warehouseman? A. Yes, sir.

Q. And continued on an hourly rated job until what time? A. Until May 18, 1942.

Q. And during that period was he paid overtime for all hours worked in excess of 40 hours per week?

A. Yes, sir, he was. He was also paid overtime from May 18, 1942, to June 15, 1942.

Q. Now Mr. Miller, were there other changes in the duties of various plaintiffs where they were promoted to the position of—what would you call it? Supervising?

A. Supervising safety engineer.

Q. Supervising safety engineer? A. Yes, sir.

Q. And with the duties of supervising safety engineer, [fol. 1333] which you have already described, will you state into the record the names and the dates upon which any of these plaintiffs about whom I have not already asked you specifically, were promoted to the position of supervising safety engineer, and how long they continued to perform those duties?

[Q.] First, I have D. M. Burke. There was no change in his function except that he did serve as an instructor from time to time, although he was classified as and worked as a safety engineer. J. O. Cavanaugh was promoted on October 20, 1943, to a supervising safety engineer and increased to \$279 a month.

Q. Now in each case tell us how long he continued to perform the duties as supervising safety engineer?

A. He continued until his termination. He was then in the production building in charge of safety engineer in that unit.

Q. In that connection, let me ask you: This supervising engineer, did his duties call for him to attend these meetings?

A. His duties called for him to attend all safety meetings held in that building.

Q. Before we go on with these names, tell us how often

those meetings were held, what the supervising safety engineer did at those meetings, and what purpose he served?

A. They were usually held once a week. There was a [fol. 1334] short period when no meetings were held at all of about two and a half or three months. At those meetings he attended the meetings and was there to give his recommendations or his advice, or his best judgment on any matter that might come up for discussion particularly where any changes, or the use of any new type of material or equipment or guards were suggested or recommended.

Q. Now, of the three safety men on each shift in these production buildings, the one who was designated as the supervising safety engineer was the one who attended the meetings? Is that correct? A. That is true, yes, sir.

Q. The other two men may or may not attend?

A. That is right.

Q. Now will you go ahead and state when the different plaintiffs were promoted, when certain of the plaintiffs became supervising safety engineers, and what increase they received, and how long they performed those duties?

A. S. P. Coley was promoted to supervising safety engineer on October 9, 1944, and increased from \$240 to \$277. He was assigned to a .50 caliber production building and had charge of supervision over the other safety engineers.

Q. And continued how long?

A. And continued until his termination. Sterling Cook was promoted supervising safety engineer on October 25, 1943, and increased from \$260 to \$279. He was supervising safety engineer in the tool and gauge building with two [fol. 1335] other safety engineers under his supervision.

Q. Continued to?

A. And continued until his termination. Mr. Darby was promoted to supervising safety engineer on October 4, 1943, and had complete charge of all safety in the proof house.

Q. What is the proof house?

A. The proof house was the building with gun ranges where they actually shot and tested various samples of ammunition after production was completed. It did require considerable attention for safety, and it was usually of a different kind from that in the other units. It was where they had the machine guns, and we gave various tests and fired various types of cartridges to determine the effectiveness.

Q. And continued?

A. And continued until his termination. George Gillen was safety engineer in sanitation from May 1, 1942, until October 4, 1943. At that time he was transferred to safety engineer in the maintenance and continued to function in that department until his termination. W. E. Gorg, Jr., was safety engineer at the burning grounds and power disposal from February 15, 1943, until October 4, 1943; when he was transferred to the tool and gauge-building as safety engineer, and continued until termination.

Q. I think if you will start with the date of promotion to supervising safety engineer it will shorten it.

[fol. 1336] A. F. N. Harris was promoted to supervising safety engineer October 25, 1943, and continued, with salary increase, and continued in that capacity until he was terminated. E. H. Hoskins was promoted to supervising safety engineer on October 25, 1943, had an increase from \$260 to \$279 per month, and continued until his termination. He was assigned, he had miscellaneous assignments throughout the plant. He was not assigned in this specific building. F. F. Knight was promoted to supervising safety engineer on May 4, 1943, and continued until October 11, 1943, when he left the department and became a coordinator in the plant maintenance department. A. C. Kropp was promoted to a supervising safety engineer on February 14, 1944, at an increase from \$260 to \$280, remaining on this until March 12, 1945, when he became a coordinator in the plant maintenance. R. J. Peterson was promoted supervising safety engineer November 1, 1943, at an increase from \$240 to \$279 and increased again on May 1, 1944, to \$300, again on November 20, 1944, to \$320, and remained on that until termination. He was assigned to electrical areas in both Plant one and Plant two. J. S. Schneider was promoted to supervising safety engineer on February 26, 1945 and increased from \$236 to \$277 and remained until his termination. R. M. Stewart was promoted on May 4, 1943, to assistant supervisor of safety engineer department, and was promoted again on November 1, 1943, to supervising safety engineer, and remained until his termination. C. L. Valci [fol. 1337] was promoted on 10/21/43 to supervising safety engineer, increased from \$240 to \$279 per month, and remained until his termination. That is all I have.

Q. Mr. Miller, do you have ready at hand any information about any other instances where any of these plaintiffs were working on an hourly pay during a part of the time described in the complaint? Or have you finished your cross checking of that?

Mr. Bond: I will say, Mr. McRoberts, in computing our overtime claimed both in the complaint and in Exhibit B-1 to B-59, that we filed herein, we have not included any time when the employees worked on hourly rate during which time presumably they received overtime compensation. Isn't that correct, Mr. Harris?

Mr. McRoberts: I don't know about the computation, but in a number of instances the complaint alleges they were employed as a safety engineer on a salary basis from such a date to such and such a date, when as a matter of fact during part of the time they were on an hourly rate job, a different job.

Mr. Bond: We disregard in our computations all the time they worked on an hourly rate. The reason the complaint gives the date including that service, I took them from your summaries Exhibit A where you stated when the employment began and terminated, so we used the dates in the petition; but when he made the computation which we filed we did not include the time the employee worked on an hourly rate.

Mr. McRoberts: I think that is all.

[fol. 1338] (Counsel and Court confer at Court's Bench.)

#### Cross Examination by Mr. Bond:

Q. Mr. Miller, before getting into the general features of this case, I want to clear up these time-cards. You were shown, I believe your Counsel in response to my request has brought down some illustrative time-cards for each of these plaintiffs for a week in February, 1943, and a week in November, 1943. And from these time cards he picked out two: one relating to A. C. Kropp, and one to B. J. Ludwig, concerning which you were questioned yesterday. A. Yes, sir.

Q. I will ask you to look at the two time-cards again and tell me first what are the stamped figures?

Mr. McRoberts: Your Honor please, may I suggest you recall Mr. Miller said there were some questions he couldn't answer about these. I have present in the courtroom and expect to put on the stand Mr. Kelley, who was in the Pay Roll Department and under whose direct supervision these cards were kept and computations made. He may be able to answer better than Mr. Miller.

Mr. Bond: You got a good deal of information from Mr. Miller yesterday. I think Mr. Miller will be able to tell me what I want.

Q. Those stamp figures, what are they?

A. The stamp figures in the lower portion of the card [fol. 1339] are figures printed by the time clock, at the time the time-card was punched.

Q. They show the time that the employee punched in and the time that he punched out? Isn't that correct?

A. That is correct.

Q. For that employee for each day of that week?

A. This is the morning range showing the time employee punched the card and this is the quitting punch.

Q. For example, he clocked in the first day at 7:22 A. M. and clocked out at 5:11. Now then, what are the pencil figures next to that?

A. The pencil figure immediately following that is the figure put in by the time-keeper for allowed time that he allowed this employee for that day.

Q. But am I correct in stating that that includes the total time between these two stamped figures, less a deduction which you made of odd minutes due to your method of computation and less a half hour each day for lunch?

A. It does—well, I can't answer you that. Mr. Kelley will have to.

Q. That is what you said yesterday?

A. No, sir; for one period it does include and for one period it doesn't.

Q. Those two cards that you have there before you, the time-keeper in putting in those pencil figures left off a half hour of the time shown by the time-clock for lunch?

[fol. 1340] A. That is right.

Q. On each date in each case for the whole week? Isn't that so? A. That is right.

Q. Now then, in your summaries which you gave me, giving the pay roll information as to the plaintiff's involved in this case—

Mr. McRoberts: There is no showing Mr. Miller gave them to him.

Mr. Bond: When I say "you" I mean the defendant.

Mr. McRoberts: Or that Mr. Miller has anything to do with these documents.

A. The time omits one-half hour in total elapsed time.

Q. In reporting to the plaintiffs the total actual hours of that employee for that week, your company reported the total of the pencil figures, did they not?

A. I didn't prepare that computation.

Q. I will ask you to look at the plaintiffs' Exhibit A-2 for that pay period 2/7/43 and state in the record what is reported there under the column "total actual hours"?

A. 51.7.

Q. And what is the total actual hours stated in pencil on that card?

Mr. McRoberts: Nothing on the card that says anything about total actual hours, Judge Bond.

[fol. 1341] Q. What is the total of the pencil figures on that card? A. There is a total on the card of 51.7.

Q. Which corresponds with the figure given in the column "total actual hours" in Plaintiffs' Exhibit A-2? Isn't that correct? A. That is right.

Q. So that it is correct to state, then, that for that week the total actual hours reported in Plaintiffs' Exhibit 2-A was three hours short of the total actual hours shown on the time-card? Isn't that correct? A. No, sir.

Q. Why not?

A. Well, it isn't correct, the same figure is shown in both places.

Q. But that figure is arrived at by eliminating a half hour each day for lunch, isn't it? A. Yes, sir.

Q. So that had lunch been included—well, that is right,

Now then, is that typical of all the cards I had produced here? A. I don't know.

Q. You were able to state yesterday in answer to Mr. McRoberts that your testimony about the cards was typical of the others, were you not?

Mr. McRoberts: I think the record will show what he stated. I don't believe it will show that.

[fol. 1342] The Court: This is cross examination.

Q. Did you not state in answer to your Counsel yesterday that that was typical of the whole bunch that he showed you?

A. No, sir, Mr. McRoberts didn't ask me whether these cards would be typical of all of the cards for the periods shown on these computations.

Q. He did ask you, though, if they were not typical of all the cards brought here in answer to subpoena duces tecum? A. I don't think so.

Q. Now then, I call your attention to Plaintiffs' Exhibit B-2, which contains computation of the overtime claim of Arthur C. Kropp, and ask you to state into the record the figures that are shown for that week, 2/7/43, under columns 2-A and 2-B.

Mr. McRoberts: That exhibit speaks for itself. I don't think we ought to ask him to state what appears on the face of the exhibit.

(Last preceding question was read.)

The Court: He may answer.

A. I have never seen this report before or these figures. The figure shown in column 2a is 51.7. The figure shown under column 2b for the same is 54.7, and each have a check mark following the figures.

Q. 51.7 is the figure shown on the time-card in pencil, isn't it? A. That is the same.

[fol. 1343] Q. And 54.7 is that figure plus three hours?

A. I don't know what it is plus, it is three more than that figure.

Q. And you are not willing to state that that difference which we have just pointed out between the time shown

on the time-card and the pencil computation—you are not prepared to state that what I point out is typical of the whole period of these [plaintiffs'] employment?

A. I am sure that it is not.

Q. Mr. Kelley will know that? A. Yes, sir.

Q. And he will be a witness in this case? A. Yes, sir.

Q. Now then, Mr. Miller, taking up this chart Exhibit 10. Well, I have a copy of it. It is exactly the same as the organization chart attached to your answers to my interrogatories herein. Isn't it Mr. McRoberts?

Mr. McRoberts: I think one is typewritten and one is printed. I think they correspond.

Q. Will you use your Exhibit 10 and I will use this typewritten copy. I notice that you have at the head of the safety department an officer entitled chief safety engineer, and he is named for a period as being Mr. Strickland, and for another period as being Mr. McKitrick. Was that the office and those the officials that the previous witnesses have referred to as safety directors?

[fol. 1344] A. Yes, sir.

Q. Which is the correct title?

A. We print the correct title on this exhibit, Chief Safety Engineer.

Q. The fact is, they were generally spoken of in the plant as safety directors, were they not?

A. Not by us, no, sir.

Q. Your official title for these two men was Chief Safety Engineer? A. Yes, sir.

Q. What the previous witnesses have referred to as assistant directors you would place in a block as assistant chief engineer? A. That is correct.

Q. Now going below this top personnel, you have blocked all of the various operating units of the plant, haven't you? A. No.

Q. What are those?

A. Those are various subsections of the safety department.

Q. Subsections of the safety department? A. Yes, sir.

Q. That operated in these particular units of the plant isn't it?

A. Not necessarily. Those are the subsections being a

breakdown of the safety engineering department. This chart doesn't say anything whatever about production.

[fol. 1345] Q. It doesn't show the particular buildings or units they were in? A. No, sir.

Q. It is just a breakdown of the department into different sub—what do you call it? Different sub-groups?

A. Subsections.

Q. Subsections, yes, sir. Now in several of these groups you have an official whom you describe as staff safety engineer? A. Yes, sir.

Q. And over whom did he exercise supervision?

A. Over this whole section or group.

Q. That means the safety engineers under him? Is that it?

A. It means the safety engineers underneath him and various other people including approximately 270 or 280 hourly paid employees.

Q. Not in the safety department?

A. In the safety department.

Q. And at the bottom of your chart you have safety engineers, three shifts? A. Yes, sir.

Q. That would be the men whom you speak of interchangeably as safety inspectors or safety engineers, and would include the plaintiffs in this case except for such period of their employment as they had different titles? Isn't that it?

[fol. 1346] Mr. McRoberts: Just a minute. There is no testimony about the plaintiffs in this case except certain ones who have testified.

Mr. Bond: I am asking him if it wouldn't include the plaintiffs in this case.

The Court: He may answer.

A. With the exception that I have just testified to, it would include all of the safety engineers functioning as such at the plant.

Q. It would include the plaintiffs in this case, wouldn't it? A. Some of them.

Q. Didn't all of them work there as safety engineers?

A. No, sir.

Q. Who didn't? A. I just testified.

Q. That is for part of the time?

A. No, sir, some of them full time. Some of them never worked as safety engineers.

Q. You are referring to those instances you have just enumerated. You would give the date in each instance where his title changed? A. That is right.

Q. And prior to that date he was a safety engineer, was he not?

A. No, sir. I told you two of those men were instructors [fol. 1347] for instance.

Q. Name the two that were not.

A. Stutz was never a safety engineer.

Q. And who else?

A. Trimble was an instructor during the entire employment.

Q. With those two exceptions, according to your records, all the plaintiffs in this case worked in the safety department at sometime or another as safety inspectors or safety engineers? Is that right?

A. I think I have another exception.

Mr. McRoberts: Is that Mr. Bateman.

A. Mr. Bateman was always an instructor. And there could be another one.

The Court: Mr. Burke you testified to as an instructor at one time.

Mr. Bond: But not the whole time.

The Court: He said he served as instructor from time to time, was his language if I recall it.

A. I have in mind one other man who was hired as an assistant staff supervisor before his employment; and who had never been a safety engineer.

Mr. McRoberts: That was one of the men about whom I asked you directly. The record will show which one it was. A. I don't locate it at the present time.

[fol. 1348] Mr. McRoberts: I think I can get it for in just a moment, Mr. Miller. Mr. Stutz was employed with the title of Assistant Staff Supervisor, wasn't he? A. Yes, sir.

The Court: Mr. Stutz he already mentioned.

The Witness: That may be the one I had in mind.

Q. (Mr. Bond) With the exception, then, of those three, am I not correct? With the exception of Stutz, Trimble and Bateman, it is correct to state that all of these plaintiffs were at some period of their employment employed in your safety department in the capacity of safety inspectors or safety engineers? Isn't that correct?

Mr. McRoberts: May I direct your attention to Edwin F. Peters. See what your record shows on him.

A. The record on Edwin F. Peters shows that he was never classified as a safety engineer.

Mr. McRoberts: Or a safety inspector?

A. Or a safety inspector.

Q. (Mr. Bond) I will ask you, Mr. Miller, whether or not all of the plaintiffs in this case, with the exception of Messrs. Stutz, Trimble, Bateman and Peters, were employed in your safety department of the United States Cartridge Company during at least a portion of their time as safety engineers or safety inspectors?

A. That is right; yes, sir, at one time or another.

[fol. 1349] Q. Now, Plaintiffs' Exhibit A contains a column entitled "Occupational Code". What is that?

A. I haven't seen the exhibit.

Q. Don't you know, or don't you have an occupational code out there? A. Yes, sir.

Q. What was that occupational code?

A. Are you asking me?

Q. No, sir, I will ask you what your occupational code was.

A. Occupational code is a classification of the type of job on which the man is classified.

Q. Will you look at Plaintiffs' Exhibit 27, at the bottom of the page, and tell us what classification is there given Mr. Bateman by your occupational code?

A. Well, the classification that is written on here, eight forty-three, safety engineer.

Q. I will ask you to look at Plaintiffs' Exhibit A-16, at the bottom of page 2, and ask you to state what code of classification is there given to Mr. L. W. Trimble, during the period covered by that asterisk?

A. On page 2 there is an asterisk followed by 843, senior safety engineer.

Q. And I will show you Plaintiffs' Exhibit A-14 relating to Mr. W. Stutz and ask you what code classification appears there with reference to him?

[fol. 1350] A. Eight eighty-six, assistant staff supervisor.

Q. Which is a position in the safety department, is it not?

A. That classification is plantwide safety department, as well as all other departments.

Q. Now Mr. Miller, in the operation of this safety department, from whose office did the directives come?

A. They came from my office.

Q. Did you ever send a single directive down to the safety engineers? A. Daily, yes, sir.

Q. Over your signature? A. Yes, sir.

Q. Wouldn't it be sent to the chief engineer?

A. That is right, of the department; that is right.

Q. But from whom would the safety engineers or inspectors get their directives?

A. They would usually get them from these supervising safety engineers. And prior to the time that there were supervising safety engineers, they would get them from these assistant staff engineers of the department.

The Court: This is the usual time for recess. Announce a recess until 2 o'clock.

Thereupon, at 12:30 P. M., July 11, 1946, a recess was taken to 2 P. M. The proceedings were then resumed as follows:

The Court: Proceed.

[fol. 1351] Q. (Mr. Bond) Mr. Miller, I believe in Exhibit No. 10 is what purports to be the organization set up of the safety department. You make no differentiation below the grade of staff safety engineers. Isn't that correct?

A. No, I don't think so.

Q. Well, I will show you. Look down there at staff safety engineers, below that, all that appears is "safety engineers three shifts"? A. That is right.

Q. So there is no differentiation on the chart between ordinary safety engineers and the foremen and supervisors, is there? A. No, that is right.

Q. And in fact, as a practice, the foremen and supervisors work the shift just like other inspectors, don't they?

A. That is right, sure.

Q. And while on that shift did the same work of the safety inspector or a safety engineer? Isn't that correct?

A. No, sir.

Q. You mean they didn't patrol and inspect and report like the others did?

A. Some of them did and some of them didn't.

Q. Well, if they didn't, who did that work on their shift then?

A. Some of them didn't have a shift, some of them didn't have an assignment.

[fol. 1352] Q. I am not talking about them, I am talking about all foremen or supervisors that worked the shift did the same work on that shift as a safety inspector who was not a foreman or supervisor?

A. That was part of the work and part of the responsibility, yes, sir.

Q. But I asked you if they didn't do that, if they did that work? A. That is right, certainly.

Q. Now in these buildings or units in which these inspectors operated the authority was in a personnel, is that right? What you call the supervisory personnel?

A. What authority?

Q. Authority over the employees or operations in the unit? A. No.

Q. Including safety? A. No, sir.

Q. Included duty to reprimand employees for infractions of safety rules? A. Yes.

Q. Included the taking of corrective action in case of infraction? A. Yes, except in emergencies.

Q. Now then, in view of these notes that you gave me I call your attention to next to the last page—by the way, [fol. 1353] when I say supervisory personnel in these units or the building, that is meant the building superintendent and his foreman, isn't it? Well, tell me what it means.

A. I don't know. Let's tie it up with that question.

Q. It is a question in itself. I have been asking you about where the authority was in the various buildings or units in which the safety inspectors operated, and you told

me in some instances at least it was in the supervisory personnel in that building or unit. Is that right?

A. The authority so far as the safety department was concerned, rested with the supervising safety engineers. The authority so far as any of these staff supervisors was concerned in the safety department, rested with them. The authority with respect to production, to machines, to production personnel, rested with the supervision of production. The authority with respect to safety, pertaining to these production employees, rested with the production personnel supervision.

Q. When you say Personnel Supervision, you mean building superintendent and his foremen, don't you?

A. Yes, sir.

Q. I believe your Counsel exhibited Plaintiffs' Exhibit F to you yesterday, being the general instructions, forms, data and so forth, that was distributed to all safety engineers? Is that right? A. I think it is.

[fol. 1354] Q. In fact, it went to everyone in the safety department, didn't it?

A. May I see it. (A document is passed to witness.)

A. No, it didn't. It went to every safety engineer and every supervisor in the safety department.

Q. Now who was Mr. D. C. Storms?

A. He was general superintendent.

Q. And who was Mr. Gilbertson?

A. Mr. Gilbertson was production superintendent.

Q. Who was Mr. Hurley?

A. Mr. Hurley was chief inspector.

Q. Who was Mr. Stewart?

A. Mr. Stewart was plant engineer.

Q. Who was Mr. Allen?

A. Mr. Allen was head of the production control.

Q. I call your attention to the following from a communication from Mr. D. C. Storms, one of the gentlemen whose names I have just stated in the record, dated October 16, 1942, contained in Plaintiffs' Exhibit F, as follows:

"It is the responsibility of the supervisory personnel to enforce all safety rules of this Company whether they apply to flywheels, mechanical guards, goggles,

hair nets, uniforms, safety shoes, conductive shoes, and so forth. I ask that you so instruct all general foremen and foremen accordingly."

[fol. 1355] Were those instructions correct? A. Yes, sir.

Q. Do you say that supervisory personnel did not have authority—

Mr. McRoberts: Witness did not state that, he stated—

Q. Having heard what I have read from Plaintiffs' Exhibit E (F-1), being the communication from Mr. Storms to these gentlemen, do you still say that supervisory personnel didn't have the authority over safety in their units?

Mr. McRoberts: Object to that as a misstatement of witness' prior testimony. He asked him if he still stated that. The witness didn't at any time make such a statement.

The Court: Objection sustained.

Q. Have the supervisory personnel authority over safety in their units?

A. You are asking whether the production supervisory—

(Last preceding question was read.)

Mr. McRoberts: He asked you to clarify what supervisory personnel you are talking about. Object to the question because it doesn't indicate which supervisory personnel he is referring to.

Q. Have you any doubt about what I am referring to?

A. No, I haven't any doubt at all about what you are referring to.

Q. Then answer the question, please.

[fol. 1356] Mr. McRoberts: Do you know which supervisory personnel he is referring to? A. No, sir.

Q. Will you look at that communication from Mr. Storms and Mr. Gilbertson and tell us what supervisory personnel he was referring to therein?

A. The letter of Mr. Storms is addressed to the gentle-

men whose names you read. Each of those gentlemen were in charge of a separate department of the company.

Q. Yes, sir?

A. Mr. Storms in his letter is talking about the supervisory personnel in each department operating under the men listed at the top of the letter. That supervisory personnel had complete authority over the safety measures with respect to their employees, machinery, working conditions, and any other conditions within their departments.

Q. And no safety engineer held any authority over any subject in the unit at all? Is that right?

A. That is not right, no, sir.

Q. What were the four departments that those men had in charge?

A. Mr. Gilbertson had complete charge of the production department.

Q. Let's stop right there a minute: That directive of [fol. 1357] Mr. Storms then means that in the production department the supervisory personnel therein under Mr. Gilbertson had complete authority over safety? Isn't that so?

A. With respect to its application to his employees, to his machinery and all his working conditions.

Q. And which was Mr. Hurley's Department?

A. Mr. Hurley was production inspector.

Q. And the directive had the same meaning as to his employees? A. That is right.

Q. And which was Mr. Stewart?

A. Mr. Stewart was plant maintenance.

Q. And the directive had the same effect as to his employees? A. That is right.

Q. Which was Mr. Allen's?

A. Mr. Allen's was production control.

Q. And it had the same meaning as to his?

A. That is right.

Q. Now the responsibility mentioned in that letter was the responsibility of the supervisory personnel to enforce all safety rules? That directive applied in all units in which the safety men operated, didn't it? A. Yes, sir.

Q. And in reference to safety engineers, I will call [fol. 1358] your attention to Item 6. I would like to have

this page on which that letter of Mr. Storms appears marked for identification, "Plaintiffs' Exhibit F-1." (The page is marked as requested.)

Mr. McRoberts: The whole book is an exhibit in evidence.

Mr. Bond: I believe the way the record is now, I offered the general instructions from it. In that [eolouqy] with us the Court stated that either party might refer to any other part of it. I think that is the way the record is now.

Mr. McRoberts: May I interrupt to say we would like to offer the whole document; if and to the extent it hasn't already been offered and received in evidence.

Mr. Bond: But I would like this page to be part of my offer, Plaintiffs' Exhibit F-1.

Q. Now then, I call your attention to Item 6 of the general instructions, page 2:

"The safety engineer will not attempt any correction of these violations by contacting the individuals who are guilty of these violations. In all cases he will contact the supervisors of the individual concerned, and will leave corrective action to the supervisor."

I will ask you if that instruction applied to all units in which the safety inspectors operated?

A. That instruction applied and we insisted upon it.  
[fol. 1359] Q. The fact is, it has been stated that violation of it would warrant dismissal. Is that correct?

A. I don't know that it has been stated.

Q. Now then, appended to these general instructions in which you set out duties of safety engineers, which I have read in evidence, there are certain forms in this exhibit. One, a form for the report of infractions of the safety rules. You will find that about six or seven pages beyond the page I just read from. This document does not seem to be numbered. I don't know why. Do you see that form?

A. I don't know. I don't have that form here.

Q. I ask you to look at that form and also the two forms following, upon each of which I have turned down a page.

A. Yes.

Q. Were those forms put there as illustrative examples to be followed by the safety men in making their reports?

A. I think so.

Q. The first one is a form upon which to report infractions, and the next two relate to accidents. Isn't that so? The first one is headed: "Report of violations of safety regulations," and the second one "Safety inspection report," isn't it? A. Yes, sir.

Q. And that, I believe, is the form that was to be used [fol. 1360] in hospital cases. Isn't that so?

A. In cases requiring first aid or hospitalization.

Q. Will you look at the next one? My information is the next one was to be used for first aid or hospital, and the first ones for hospital. If I am wrong, state what is correct.

A. I understand the first one was used for first aid and hospital.

Q. And the second one?

A. Second one was to be used on the same thing. The [see] one you will notice is very complete, and it is made up so that the safety engineer is merely required to put a check mark, whereas, the first report he is required to write out in full all the results.

Q. And as an example to him those forms in that book are filled out in writing just so far as the real accident or transaction occurred? A. That is right.

Q. Now it is a fact is it not that nowhere in any of these reports which the company gave its safety engineers as samples to be followed, is there anything indicating any corrective action on the part of the safety inspector?

A. No, that is not true.

Q. Point out any action that the safety inspector took.

A. The safety inspector report has one complete subdivision for the corrective action.

[fol. 1361] Q. Yes, sir, and under "Correction" in that sample of that accident report is stated the following:

"It is a human [strain] to try to retrieve something that dropped. This known hazard has been recognized and a suitable guard ~~has~~ been designed. A sample guard has been installed in gauge and weigh machine #1 for the past week. Guards for the balance

of the machines are now being fabricated in the sheet metal shop and will be installed as soon as received."

But is there anything in there to indicate that the safety inspector either installed or directed the installation of that guard? A. I think so, certainly.

Q. As a matter of fact, it would be done by the supervisory personnel, wouldn't it?

A. In some cases it would and in some cases it would be done by the safety engineer, just as reports I read where the safety engineer said, "I had a guard installed," or "I designed a guard."

Q. When he said "I had a guard installed", that means he directed the supervisory personnel to do that, or asked them to do it? A. That is right, yes, sir.

Q. Now in the form headed "Report of violations of safety regulations," in each instance the remarks indicate action to be taken by the foreman, do they not?

[fol. 1362] A. Yes, sir.

Q. Now I call your attention to Defendant's Exhibit No. 12, about which you testified yesterday, which purports to be a page of data and information relating to safety engineers, that you prepared, among other reasons, to submit to—I believe it was your occupational analyst? Do you have that there? A. I have, yes, sir.

Q. He was an employee of the United States Cartridge Company, wasn't he? A. Yes, sir.

Q. Whom you employed to handle the classification of these employees, didn't you?

A. That is right, to make his recommendations.

Q. And you prepared the information on this Exhibit 12 for his use in classifying these parties, didn't you?

A. Well, as I stated yesterday, that was one.

Q. That is the one I am interested in. A. That is right.

Q. Now have you got that before you?

A. I have the one I have before me.

Mr. Bond: I would like to use this, if you have that.

A. No, sir, I don't have that.

Q. I will ask you to look that over and tell me if it is not a fact that there are matters stated in that exhibit which do not exist in the safety department?

[fol. 1363] A. No, I couldn't say ~~that~~.

Q. All right then, I will call your attention to this top sentence, "Explain briefly but adequately the work done by this type of employee." And all this is part of the information contained on that exhibit: "In complete charge of safety for an entire unit building or more during one shift." A. Yes, sir.

Q. You don't mean to tell me that a safety inspector was in complete charge of safety for an entire unit building during the shift, do you? A. Yes, sir.

Q. Haven't you just told me that was under the authority of the building supervisory personnel?

A. No, sir. What we have tried to tell you is that the safety engineer in that building is responsible and is in charge of seeing that all of the supervision in the building is carried out, carried forward, the safety program. This is his job, he has that responsibility, he has that authority.

Q. Isn't that responsibility limited to noting and reporting and recommending? A. No, sir.

Q. You just told me he couldn't take any corrective action in ordinary cases.

A. That is right, he is not supposed to. He is supposed [fol. 1364] to see the other supervision takes it.

Q. In view of the testimony you have just given, do you think it was an accurate statement to your occupation analyst to tell him that safety inspectors were in charge of safety for an entire unit building or more during one shift?

A. That is absolutely correct.

Q. Now I call your attention to this answer to Question 2 in this information you gave your analyst: "Does the job require special training, experience or knowledge along specialized or technical lines?" You answered, "Yes," and explain: "It is desirable that the inspector have five years' safety experience in explosives, or a college degree in science." A. Yes, sir.

Q. Were any such requirements or qualifications of that ever insisted upon in the safety department? A. Yes, sir.

Q. Can you name a single inspector who had a college degree in science, or any college degree?

A. No, I can't without examining the applications.

Q. Can you name any that had experience in explosives?

A. No, I couldn't. Of course, all of them had experience in explosives before they were given an assignment in production.

Q. The experience they got there on the job?

[fol. 1365] A. That is right, and in our training.

Q. But you are not undertaking to tell the Court that before giving them a job it was a requirement that they meet the requirements of this sentence that I have read?

A. No, I am not. I am saying that was the specification setup for a safety engineer.

Q. But you informed your occupational analyst that those were the requirements, did you not? A. No, sir.

Q. Now then, in the matter of performing his duty, I will ask you—we had some testimony in reference to first safety rules. Were they prescribed safety rules in existence in the plant? A. Yes, they were.

Q. Were they in writing?

A. They were put into writing, yes, sir. They were not in writing at the time, all of them were not in writing at the time we started operations.

Q. Did you gradually get them all in written form?

A. And revised and added to them from time to time.

Q. And the safety inspectors were informed of these safety rules? A. Yes, sir.

Q. And the management also prescribed the safety equipment that was to be on the machines, didn't they?

[fol. 1366] A. Well, the management prescribed it, yes, sir. Those prescriptions of the management were in many cases based upon the recommendations of the safety engineers.

Q. But I am correct that the management formed the policy, didn't they? A. Oh, yes, sir.

Q. And also laid down standards of housekeeping to be observed in these buildings, didn't they?

A. No; there were general provisions for housekeeping. One of the functions of the safety engineer was to use his judgment in determining whether adequate housekeeping was being observed.

Q. That is with a view of meeting certain requirements, such as safe floors?

A. Yes, sir; in connection with that he had to take into consideration working conditions, type of operations, and

anything else that might have a bearing on the house-keeping.

Q. The judgment the safety engineer had to exercise in the matter of violation of safety rules, was to observe whether or not the rules were violated, wasn't it?

A. To observe whether or not the rules were violated, to observe whether or not the rules were adequate, or whether additional rules were needed. And the same thing applied to machinery and equipment.

Q. Now you in answer to questions of your counsel yes [fol. 1367] terday in reference to the lunch period of employees, I will ask you whether or not those employees were permitted to leave the plant during the lunch hour?

A. All employees were permitted to leave the plant during the lunch hour.

Q. Well, didn't they have to have a pass to get out of the gate? A. For a part of the time they did.

Q. And this safety inspector didn't have any such pass, did he?

A. Some of them did. As a matter of fact, I think all of them had permanent passes to get in and out of the gate.

Q. My information is to the contrary. Do you know that? A. Yes, sir.

Q. To let them in and out at all times?

A. They not only had a permanent pass to get in and out of the gate, they had a permanent pass that would let them through police lines at all times.

Q. During the working hours?

A. Twenty-four hours, seven days a week, those passes would permit them to get in and out.

Q. I am informed that there were two passes in effect out there, and that the one you are talking about was one to come and go to and from work; but it wasn't one they could use at the lunch hour.

[fol. 1368] A. No, sir, I mentioned both of them.

Q. They were subject to call during the lunch hour, were they not?

A. They were subject to call twenty-four hours a day, seven days a week, in case of emergency.

Q. And every employee of the plant who was paid at hourly rate was paid for that half hour devoted to his lunch, wasn't he? A. No, sir.

Q. Are you familiar with the pamphlet that I introduced in evidence called "Your Job at the St. Louis Ordnance Plant?" A. Yes, sir.

Q. You heard me read the statement from the book which was given to every employee, either at the time or shortly after his employment, that a lunch period will be allowed on each shift and will be paid for by the company? That is, that no deduction will be made for the lunch period? A. Yes, sir, I heard that.

Q. And you still say, even though he is working there at an hourly rate, he is not paid for the lunch time?

Mr. McRoberts: That wasn't your question before, you said "to all employees" before.

Mr. Bond: Oh, well, I didn't say all employees, I said all employees who worked at an hourly rate.

[fol. 1369] Mr. McRoberts: That is correct.

Q. Were paid for the lunch period?

A. No, sir, they were not.

Q. Which ones were not?

A. All employees who worked at an hourly rate on a production job on a three-shift basis, were paid for the lunch period. All hourly rated employees who work in any office or away from production, or not on a three-shift operation, were not paid for the lunch period.

Q. These safety inspectors were on a three-shift operation, were they not? A. Most of them, yes, sir.

Q. And they are asking in this case to be paid at an hourly rate, are they not? A. I don't know.

Mr. Bond: I want to pass now, Your Honor, to some questions about those particular plaintiffs that he picked out this morning as having at times during their employment had titles different than safety engineer or inspector, and I would like to get the summaries relating to each, out. I can't go quite as fast as I would like. I had rather go on with it tomorrow morning, if you can use the rest of the afternoon.

Mr. McRoberts: If I may withdraw Mr. Miller temporarily and put on some other witnesses who are anxious to get away.

Mr. Bond: That will be satisfactory to me.

[fol. 1370] The Court: We will have to see what the situation is tomorrow.

○ Mr. McRoberts: I had hoped to finish today.

Mr. Bond: I will not have much rebuttal. This witness is temporarily withdrawn, and I reserve the right to cross examine him further.

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[fol. 1371] JAMES L. KELLEY,  
of lawful age, produced, sworn and examined, testified on behalf of defendant as follows:

Direct Examination by Mr. McRoberts:

Q. State your name. A. James L. Kelley.

Q. Where do you live? A. St. Louis, 5882 Cabanne.

Q. Where are you employed?

A. Unemployed at the present time.

Q. You were formerly with the United States Cartridge Company? A. Yes, sir.

Q. In what capacity? A. Pay roll timekeeper.

Q. And as such, Mr. Kelley, was it part of your duties to either do or have done under your supervision the making of certain computations in pencil on the time-cards of [fol. 1372] the safety engineers employed at the plant?

A. It was my duty to have it done.

Q. It was done under your supervision, direction and control? A. Yes, sir.

Q. You didn't do the actual computations yourself?

A. No, sir.

Q. Are you familiar with the principles or the formula that was used in making those computations? A. I am, sir.

Q. I believe there was a change in that formula during this period of operation? A. That is right.

Q. Were there just two general principles that were followed there during the first period and then during the second period, or more than two? A. Two is all I know.

Q. And the first applied to the period up until approximately October 11, 1943?

Mr. Bond: I would like the witness to state the facts, and not counsel state them.

Q. And your first applied during what time?

A. From the beginning of the organization to approximately October 11, 1943.

Q. And the second during what time?

[fol. 1373] A. From October 11, 1943, until the termination.

Q. Now during the first period will you state what principle was followed in making those pencil computations on the time-cards?

A. Well, during the original period, or this initial period, I had a tolerance period, or time to ring in before starting the shift, and a time to ring in at the close of the shift. If they rang in within that period either at the beginning or the end, they were paid straight.

Q. We are talking computations. When you talk will you talk about computations rather than payments?

A. All right.

Q. Simply the method of arriving at these pencil figures.

A. If he rang in within the tolerance period and rang out within the tolerance period, in the initial period, he had credited eight hours for an eight and a half hour day, 15 minutes before the beginning of the shift or 15 minutes after the close of the shift. He had 15 minutes to ring in and 15 minutes to ring out at the close of the shift, and they got no credit for that time, in case he rang out within that tolerance period—

The Court: Fifteen minutes before the shift started and 15 minutes after it closed?

A. Yes, sir; if they rang in in excess of that tolerance period, that was included in the extension of their time.

[fol. 1374] Mr. Bond: Then the tolerance period was included? A. Yes, sir.

Mr. Bond: But not the excess?

(No reply)

Q. (Mr. McRoberts) To use a specific example: if a card was punched ten minutes before the employee's shift began, you ignored that ten minutes in making these extensions? A. That is correct.

Mr. Bond: No, sir, he said fifteen.

Mr. McRoberts: I am using an example of ten minutes.

Q. And if he punched out ten minutes after the end of the shift, you also ignored that? A. That is correct.

Q. If the employee punched in 20 minutes before or 20 minutes after the shift ended, then the full 20 minutes, including the 15 minutes tolerance period, was used in making these pencil computations? A. That is correct.

Mr. Bond: That is not what he said.

Mr. McRoberts: He has just said it.

Mr. Bond: The tolerance period was 15 minutes after an employee came in the morning, and 14 minutes before a shift began he didn't get credit?

A. No, sir; but if he clocked in 16 minutes he got credit for sixteen.

[fol. 1375] The Court: He got credit for nothing under the 15 minutes? A. No, sir.

The Court: Over the fifteen, after the fifteen, and excess time.

Mr. Bond: And the same thing is true in the evening, if he timed out at 4:14 he gets no extra time, but 4:16 he gets 16 minutes? A. Yes, sir.

Q. Are those figures of minutes before and minutes after, was there a qualification on that, that you gave them for the exact number of minutes before or after? or did you figure that differently?

A. It was figured to the nearest completed tenth of an hour.

Q. And by that you figured in six minute units?

A. That is correct.

The Court: Is it correct that if an employee punched in, let's say 20 minutes before, he wouldn't be given credit for the full 20 minutes but only for 18 minutes?

A. That is correct, being a completed three-tenths of an hour.

Q. And it wasn't figured, was it Mr. Kelley, to the nearest one-tenth of an hour, but it was figured to a completed one-tenth of an hour. So that if an employee punched out, we will say, to use Judge Bond's example, [fol. 1376] at 16 minutes after the end of the shift, it was figured two-tenths of an hour? A. That is correct.

Q. Not sixteen-sixtieths (16/60) of an hour? A. No, sir.

Q. Let me put it this way: if he punched out 18 minutes after the hour, he was allowed in these computations three-tenths of an hour? A. Yes, sir.

Q. If he punched out 19 minutes after, he was still allowed three-tenths? (No audible reply.)

Judge Bond: How about seventeen?

The Court: Two tenths.

Judge Bond: We have got it now, Your Honor.

Q. Is this a correct statement of that rule, and I think we went over it the other day? If an employee's card was punched within 15 minutes of the beginning or ending of his shift, no time was allowed or deductions for such extra minutes? That is correct? A. Yes, sir.

Q. If this card was punched in and out more than fifteen minutes before his shift started or more than fifteen minutes after his shift ended; then in computing the time represented by the pencil figures on the time-cards, the employee was allowed credit for the entire time from the time the card was so punched to the beginning or ending of the shift, as the case may be, computed to the [fol. 1377] nearest completed tenth of an hour. Is that a correct statement of your principle that was followed?

A. Yes, sir, if he rang in more than fifteen before and more than fifteen after the end, then it was computed from ring to ring. But if he rang in less than 15 minutes before the beginning and more than 15 minutes after the close of the shift, he would only get credit for the excess, not the 10 minutes at the beginning.

Q. During this initial period in computing those pencil figures, was there also a deduction made for one-half hour lunch period? A. In the initial period, there was.

Mr. Bond: By "initial period" you mean to October 11, 1943? A. Yes, sir.

Q. So that all of the timecards including the ones you have in your hand, are they a fair example?

A. I would say they are.

Q. And the ones you have in your hand for the purpose of the record have been identified as "Defendant's Exhibits 15 and 16," those are typical cards during the first period, are they not? A. That is correct.

Q. And the pencil computations on those cards and all other time-cards during that period, of the plaintiffs in this case, the pencil figures, both the extensions and totals, were computed in the method which you have described, according to those principles?

[fol. 1378] A. That is correct.

Q. Then after approximately October 13, 1945, what method was following in making these pencil computations?

A. The method used at that time was, they were given credit for the total elapsed time from the time they rang in in the morning, or the time they rang in at the beginning of the shift until the time they rang out after the close of the shift, with no deductions made for lunch period.

Q. Are these also figures to the nearest completed one-tenth of an hour? A. That is correct.

Q. In other words, if an employee rang in during this second period five minutes before the beginning of his shift, and 20 minutes after the expiration of the shift, you would add together both the 5 minutes before and the 20 minutes after, making a total of 25 minutes?

A. That is correct.

Q. You would compute that to the nearest completed one-tenth of an hour, which would be 24 minutes, or four-tenths of an hour? A. That is correct.

Q. And you wouldn't make any deduction for the one-half hour lunch period? A. No, sir.

Q. Or to state the principle in slightly different language, during this second period the entire elapsed time [fol. 1379] shown on the time-cards from the time he punched in to the time he punched out, with no deduction for the one-half hour lunch period, was computed to the nearest completed one-tenth of an hour minutes before the shift began and after the shift ended, added together, to arrive at the nearest completed one-tenth of an hour?

A. That is correct.

Q. And there was no deduction in these pencil computations for the one-half hour lunch period?

A. No, there was not.

Q. And those two methods were followed uniformly during their respective periods for all of these salaried employees. Is that correct? Or did it apply also to hourly rated employees? A. Just for salaried employees.

Q. And would include the plaintiffs in this case for whatever period of time they were on a salary basis?

Mr. Bond: That is going into a legal conclusion here as to whether that did.

The Court: That is for this Court.

Mr. McRoberts: That is the method of computation followed in making the pencil figures for the time-cards of all salaried employees, while they were salaried employees?

Mr. Bond: I think the cards are the best evidence.

Mr. McRoberts: Maybe I had better reframe it.

Q. Were those two methods which you have described [fol. 1380] on the witness stand, in making the computations on these time-cards, used with respect to all salaried employees?

A. To my interpretation, they had two types of salaried employees: those that received overtime and those that did not.

Q. My question is too broad. Now was this method used with respect to all salaried employees who were not paid overtime for over 40 hours a week? A. That is correct.

Q. And I am referring to both of these methods during the respective periods? A. That is right.

Q. Mr. Kelley, did you have anything to do, or employees under your jurisdiction have anything to do with preparing certain computations which have been identified as "Plaintiffs' Exhibit A?" Or was that done under Mr. Schulte? A. That was done under me.

Mr. Bond: When you submitted interrogatories, I asked you to prepare them, and I think you named these men.

Q. This was prepared under your supervision and direction? A. Yes, sir.

Q. Look at the column "total actual hours" on the one which you have in your hand. Do the figures in that column represent the pencil figures shown on the time-cards of that employee, and prepared and computed in the way in which you have just described?

A. That is correct.

[fol. 1381] Q. So that each of the items under that caption on Exhibit A corresponds to the pencil total of the hours computed for each day of the week in the method which you have described? A. That is right.

Q. And is that true with respect to all of these computations for the different plaintiffs which together form Plaintiffs' Exhibit A? A. That is true.

Mr. McRoberts: I think that is all.

#### Cross Examination by Mr. Bond:

Mr. Bond: I have just a few questions just to be sure I have this clear.

Q. As I understand you, in computing the time on these time-cards in the pencil figure which you have entered, up to October 11, 1943, you deducted from the actual hours shown on the card, after considering your tolerance period, a one-tenth computation, one-half hour each day?

A. From the beginning of the plant until approximately October 11th, we used that system.

Q. That means within a week, one way or the other?

A. I would say so.

Q. And those pencil figures you entered under the column "total actual hours" in the summaries which you prepared and your Counsel gave to me. And it is marked "Plaintiffs' Exhibit A". Is that right?

[fol. 1382] A. That is right.

Q. And whereas the time-cards themselves, the stamped figures, would show an additional half hour each day, wouldn't they? A. The pencil figures would not.

Q. No, sir, I pointed that way. In making the pencil figures you deducted a half hour? A. That is correct.

Q. So I am trying to get it clear that the figures shown on the time-card—what do you call those printed figures?

A. Clock rings.

Q. The clock-ring printed figures during all this period from the beginning of the plant until about October 11, 1943, show an additional half hour each day?

A. The pencil figure doesn't show the half-hour lunch period.

Q. That is taken in a different way, isn't it? A. Yes, sir.

Q. And if you would add a half hour each day to the pencil figures, you would get the clock rings, wouldn't you? A. I presume so.

Q. Well, wouldn't you? A. Sure you would.

Q. Now we have made some computations on your summaries, your summaries being marked Exhibit A and our computations Exhibit B, in which in computing our claim for overtime we took the figures shown under your column [fol. 1383] "total actual hours," which you now say is your pencil figure, and we added up to October 11, 1943, one-half hour each day. That would be, of course, three hours a week, wouldn't it? A. If you worked the full week.

Q. And assuming our column showing the figure that was arrived at to be correct, it would be a correct statement of the actual hours as clocked in, wouldn't it?

A. I am only responsible for our method of keeping time at that time.

Mr. Bond: I see. I think the figures speak for themselves.

Q. Now you say that men who worked on an hourly rate in your plant, and who were paid at an hourly rate, there was no deduction made over at any time for their lunch period? A. I didn't say that.

Q. Didn't you? A. No, sir.

Q. Well, is it a fact?

A. If they worked on a three-shift basis.

Q. That is to say, working on a three-shift basis, a man who is paid an hourly rate, working on a three-shift basis, the lunch hour is paid for by the company? That was your policy?

A. Yes, sir, to the best of my knowledge it was.

Q. Well, you are in charge of pay roll and time-keeping, are you not?

[fol. 1384] A. That was the policy of the company on the three-shift operation, they paid for the lunch.

Q. And you also had two groups of salaried employees, and in the case of one of those groups you paid them for their lunch hour, didn't you?

A. Very rarely, the majority of those people worked eight and a half hours and were paid for eight hours.

Q. You told your Counsel you had two groups, some paid for lunch and some were not.

Mr. McRoberts: He didn't say that.

Q. I will ask you then, myself: were there two groups of salaried workers, one of which was paid for their lunch period and one of which was not?

A. No, sir, I couldn't say that.

Q. What would you say?

A. I would say the hourly rate of salary rated employees, nonexempt employees, worked eight and a half hours, and were paid for eight.

Mr. McRoberts: The distinction between the two classes is what [your] consider exempt employees and the ones that were not?

A. With a few isolated cases, which was very few, they were very much in the minority, they were paid; but the majority of your salary rated employees, non-exempt employees, worked one and two shifts and were not paid for the lunch.

[fol. 1385] The Court: What is nonexempt?

A. Paid overtime.

Q. Let's see if this is right, then: As I understand you, wherever you had a salaried worker, that is a man working on a salary but who wasn't classified as exempt, his lunch hour was paid for? A. No.

Q. Well, what was the fact about it? A man working on a salary on a three-shift basis, who was not classified by the company as exempt, what was the policy of the company in reference to his lunch?

A. If his job was on a three-shift operation, he was paid for his lunch period.

Q. Well, that is what I asked you, these inspectors were on a three-shift basis, were they not?

A. I guess some of them were. They didn't come under my jurisdiction.

Q. And if the Court holds that they are not exempt from the Fair Labor Standards Act, then under your policy they would be entitled to the lunch period?

Mr. McRoberts: Just a moment. Object to that.

The Court: Sustained.

Q. In a lot of cases here on these summaries, you say these were prepared under your direction?

A. That is correct.

[fol. 1386] Q. In a lot of cases I note deductions from the employee's pay when he didn't work 40 hours in a week. How were those deductions computed?

A. Well, that more or less was left up to the discretion of the supervision.

Q. How did you compute that in your department?

A. If his supervisor approved his time he was paid for it; if it wasn't approved, he wasn't.

Q. Assuming that he didn't ask to have his absenteeism approved, and his supervisor didn't approve it and it was a case where you were going to dock him, how did you figure deduction? That is what I want to know.

A. It depended on the shift and his work week. If he was working on a 48-hour week, he was deducted on the basis of 48 hours; if he was working on a 40-hour week, it was deducted on that basis.

Q. You can take my word for it that this is a correct carbon copy. We can't seem to locate the original exhibit; but I call your attention to—oh, you have the original. I will show the original then: I can't seem to locate right at this moment instances in which you have made deductions from the pay period, at the end of a pay period, for payments due these plaintiffs, but there are a great many in the summaries you prepared. You remember that, don't you? A. I don't know how many there were, no, sir.

[fol. 1387] Q. There were some, were there not?

A. There could have been.

Q. Aren't you willing to admit there were some?

A. Well, there were some deductions that were made and later approved.

Q. In all cases where you did deduct in the cases of my

clients, in these summaries you computed the hourly rate on the basis of a 40-hour week, did you not?

A. It depends on whatever his work week was at the time he was working.

Q. I am asking the method followed.

A. If a man was working a 48-hour week, his deduction was made accordingly.

Q. If you computed it on a 40 hour week, that was because his work week was 40 hours? (No audible reply)

Mr. McRoberts: I ask the answer be stricken out. This witness knows nothing about what the work week of the employee was. It would be speculative and hearsay. He was in the bookkeeping department. What his work week was would depend on what happened out in the place where he worked.

Mr. Bond: He can tell the method that was used in preparing this thing.

The Court: That is what he is finding out.

Mr. McRoberts: These computations will show the hours. One shows 39.5, and over here it shows you had less pay [fol. 1388] that week, and it is a matter of arithmetic to show how much was deducted for the one-half hour. And witness was asked what the principle was they followed.

The Court: He is the man that made the computation, and the method used.

Mr. McRoberts: Then he wants to go beyond that and say, If you used a certain method this employee's work week must as a matter of fact have been according to the method he followed. Now whether he followed the right method or not, I don't know; but you can't use this employee to testify as to what the work week of that employee was. The point Judge Bond is trying to make is this: These computations according to one of the earlier witnesses, a deduction was made and when you figure it out mathematically the deduction for one hour was one [forty] of a total weekly pay, from which the conclusion is drawn that was computed on the basis of a 40-hour week. Now that evidence speaks for itself. The record is there, and I have no objection to showing that method

was used for making that computation? The figures themselves speak for that, but he wants to go beyond and ask this witness if he used that formula and if you figure it that way, then the facts about this employee's terms of employment must have been thus and so. And I say when you ask him that question you are asking this witness to either testify as to things about which he has no knowledge, and pure hearsay, or you ask him to form an opinion [fol. 1389] and conclusion based upon some formula that was used.

Mr. Bond: Would Your Honor ask him to read the question?

Mr. McRoberts: Well, the employment was on a 40-hour week. That is the question to which we object.

Mr. Bond: I think the question has been answered, Your Honor.

(Last preceding question was read)

Mr. McRoberts: If he is asking about the method, I have no objection. I don't want this testimony to be admitted as proof of the work week of any individual.

Mr. Bond: I said if his work week was forty hours, this would be your method.

Mr. McRoberts: That wasn't what he said.

(Last preceding question was reread)

Mr. McRoberts: I renew my objection for the reasons stated; he didn't answer.

The Court: He may answer subject to the objection.

Mr. McRoberts: May I question him subject to my objection?

The Court: Yes, sir, you may do that.

Mr. McRoberts: Mr. Kelley, do you know anything about the actual work weeks which any of these plaintiffs actually worked except what you might have been told by some other employees of the company? A. By the supervision,

Q. But you know nothing except what you have been [fol. 1390] told by someone?

A. The supervision of these various departments lay down the work week; and we are committed to that accordingly.

Mr. McRoberts: Your entire answer as to what any man actually worked was based upon what you were told in that respect? Is that correct?

Mr. Bond: That is leading and suggestive.

The Court: Objection sustained.

Mr. McRoberts: Do you have any other source of information as to what hours the men actually worked except what you have just told?

A. Only the policy is that done by the company by their procedures. They tell us what the hours are to be, and they are subject to change from time to time. We do not establish a work week in our department, if that is what you mean.

Mr. McRoberts: The point I am trying to make is the source of your information as to the hours which these people actually worked.

A. It is established by the company policy.

Mr. McRoberts: I appreciate the company determines what hours they work, but this was a department that you had nothing to do with directly, is that correct? Were you in the safety engineering department? A. No, sir.

Mr. McRoberts: And do you know of your own personal [fol. 1391] knowledge except what you have been told?

A. By the safety department, the hours worked.

Mr. McRoberts: Is that the sole source of your information? Were you present or do you know anything beyond that about it? A. No, sir.

Mr. Bond: Object. All of this is immaterial and [irrelevant]. Here is a man whose job it is to make the computations and deductions, and his own testimony is he does it on information given to him by the departments of defendant's concern. I am asking him for his methods and

procedure in making these deductions according to the information that he had in his department.

Mr. McRoberts: I have no objection to asking the method that was used in making those computations.

The Court: Objection sustained.

Q. (Mr. Bond) What is your job out there? I want to be sure. A. At the present time?

Q. Yes, sir. A. I am not working now.

Q. What were you doing the four years?

A. When I left there I was in charge of the pay roll, timekeeping and supervising.

Q. And you had charge of all matters of computing what [fol. 1392] was due an employee, did you not?

A. As the week work schedule was established by the company.

Q. And you didn't establish the work schedule? A. No.

Q. But you took it as it was given to your department?

A. That is correct.

Q. And you made the computations and deductions on that data? A. That is correct.

Q. And so you made the computations and deductions charged in Plaintiff's Exhibit A here?

A. That is correct.

Q. Now then, in taking an employee where he didn't work 40 hours a week, in cases where you did make the deduction, what method did you follow in computing the deduction to pay him on the basis of his work week?

A. If he was working a 40-hour week we deducted on the basis of 40 hours; or if he was working a 48-hour or a 44-hour week.

Q. And you only deducted on the basis of a 40-hour work week where the employee was working on 40 hours?

A. Where he was scheduled to.

Q. I show you a deduction you made here for the pay period indicated June 13, 1943, where according to your summary here R. M. Powell put in 39.9 hours. His gross wages and salary were \$51.79—No, sir, \$51.92, and you [fol. 1393] paid him \$51.79. Tell us how you computed that deduction of 13 cents?

A. I would have to see the records, is the only way I could tell.

Q. How much time was he short of forty? A. One-tenth.

Q. How much was he deducted? A. Thirteen cents.

Q. And that is one-tenth of how much? Well, you can take my word that is one-tenth of one thirty. A. I think so.

Q. So you used 1.30 as the regular hourly rate?

A. I would have to see the record.

Q. Could you have made the deduction on any other basis?

A. I would have to see the records before I make a statement as to how a deduction was made. I can't tell from that.

Q. The fact that the deduction was only made for one-tenth of an hour shows the man was on a 40-hour basis, doesn't it?

Mr. McRoberts: Object to that as argumentative.

The Court: Objection sustained.

Q. Do you have the procedures of the company which set out the work week for these employees on whom these computations? A. Do, I?

Q. Yes, sir. A. No, sir.

[fol. 1394] Q. Where are they? A. The company.

Q. You don't work there now? A. No, sir.

Q. Who is your successor there now?

Mr. McRoberts: The company is about out of business, Judge Bond. We are closing up and we are no longer operating.

Mr. Bond: You have an organization out there, though.

Q. What I am getting at is out there among the records of the department that you were in when you made these computations are to be found the procedures on which you acted in making these deductions, are they not?

A. That is correct.

Mr. Bond: That is all.

Mr. McRoberts: That is all, Mr. Kelley.

WALTER L. SCHULTE,  
previously sworn on behalf of plaintiffs, being called on  
behalf of defendants, testified as follows:

Direct Examination by Mr. McRoberts:

Q. Mr. Schulte, state your name, please.

A. Walter L. Schulte.

Q. You have already been sworn and testified as a witness for the plaintiffs in this case, have you not?

A. Yes, sir.

[fol. 1395] (A paper is marked "Defendant's Exhibit 19.")

(Brief discussion off the record.)

Q. Mr. Schulte, as a witness for the plaintiffs, when you were called by the plaintiffs you identified and there were offered in evidence copies of certain purchase orders, one of which was identified as "Plaintiffs' Exhibit N," wasn't it? A. Yes, sir.

Q. Was the copy which you identified there the second or third copy, or is that the original copy?

A. It is the third copy.

Q. Those purchase orders are made out in how many copies? A. Thirteen copies.

Q. And the original goes to the Vendor and the other copies go to different agencies and departments?

A. Yes, sir.

Q. Now, the copy that has already been introduced in evidence, does it have in print on the reverse side of it in the caption "Terms and Conditions"? A. It doesn't.

Q. Does the original purchase order which goes to vendor have certain terms and conditions printed on the reverse side of it? A. Yes, sir.

Q. I will show you a blank form, Defendant's Exhibit 19, and ask you if that is a copy of the original of pur-  
[fol. 1396] chase order form which was used by the plaintiffs and is the same form that was used for all of the purchase orders about which you have testified as a witness called by the plaintiffs?

A. Yes, sir, with this one exception; there might have,

been some slight changes in the conditions from time to time. It would be in general the same.

Q. The particular paragraph to which I want to direct your attention is Condition No. 2 on the reverse side. Was that condition in that language or substantially that language on all of them? A. Yes, sir.

Mr. Bond: Paragraph 2?

Mr. McRoberts: No. 2.

Mr. McRoberts: I offer in evidence, Your Honor, "Defendant's Exhibit No. 19."

**Defendant's Exhibit 19.**

19 7/11/46 - AP  
PURCHASE ORDER NO.

**PURCHASE ORDER NO.**

ST. L. B

DATE

1

ORIGINAL

**YENDOR'S COPY**

**THE UNITED STATES CARTRIDGE COMPANY  
ST. LOUIS ORDNANCE PLANT  
ST. LOUIS, MISSOURI**

## PURCHASE ORDER

TO .

ADDRESS

ENTER THIS ORDER IN ACCORDANCE WITH THE TERMS OF YOUR BID DATED \_\_\_\_\_ SUBJECT TO THE TERMS AND CONDITIONS ON THE REVERSE SIDE HEREOF. BY ACCEPTANCE OF THIS ORDER, SELLER CERTIFIES THAT TO THE BEST OF HIS KNOWLEDGE, INFORMATION AND BELIEF THE PRICE OR PRICES CHARGED DO NOT EXCEED THE MAXIMUM PRICE OR PRICES FOR THE ARTICLES OR MATERIALS COVERED HEREBY, ESTABLISHED BY THE OFFICE OF PRICE ADMINISTRATION OR ANY SUCCESSOR THERETO OR ANY EQUIVALENT GOVERNMENTAL AGENCY. IN THE EVENT IT IS SUBSEQUENTLY DETERMINED THAT THE PRICE OR PRICES CHARGED HEREIN ARE IN EXCESS OF THE PRICE OR PRICES SO ESTABLISHED, SELLER AGREES TO REFUND SUCH EXCESS TO BUYER.

**END USE CLASSIFICATION - U. S. A. - PURCHASER, THE ARMY - 5.20 - AMMUNITION. SMALL ARMS BELOW 20 MM**

**SHIP TO: ST. LOUIS ORDNANCE PLANT**

FOR ACCOUNT OF: THE UNITED STATES CARTRIDGE COMPANY

**SHIP BY**

343

EOR

**TERMS: NET**

DAVIS & ESS

6

**REQUIRED READING**

**REQUIRED DELIVERY**  
**MARK PACKAGES, CASES, ETC. WITH ABOVE PURCHASE ORDER NUMBER, SPECIAL NUMBER OF EACH PACKAGE, WEIGHT OF EACH PACK-  
AGE., VENDOR'S NAME, AND THE → DELIVERY  
FOLLOWING SPECIAL MARKINGS → POINT** **ACCOUNT**

## INSTRUCTIONS

**INSTRUCTIONS**

ACKNOWLEDGE RECEIPT OF THIS PURCHASE ORDER IMMEDIATELY BY SIGNING AND RETURNING THE ATTACHED ACCEPTANCE COPY. ENCLOSE A COPY OF SHIPPING TICKET OR PACKING SLIP IN EACH PACKAGE OR TACK INSIDE EACH CAR DOOR. MARK ALL PACKAGES, INVOICES, BILLS OF LADING, SHIPPING TICKETS, AND ALL PACKING SLIPS WITH THE SHIPPER'S NAME, VENDOR'S NAME, THIS PURCHASE ORDER NUMBER, DELIVERY POINT, AND ACCOUNT NUMBER. MAIL SEPARATE INVOICES FOR EACH SHIPMENT AND EACH PURCHASE ORDER IN ORIGINAL AND 2 COPIES TO THE UNITED STATES CARTRIDGE COMPANY, ST. LOUIS ORDNANCE PLANT, 4300 GOODFELLOW BLVD., ST. LOUIS, MISSOURI. DESCRIPTION OF MATERIALS ON INVOICES SHOULD CONFORM TO DESCRIPTIONS HEREON.

THE UNDERSIGNED PURCHASER CERTIFIES, SUBJECT TO THE PENALTIES OF SECTION 35(A) OF THE UNITED STATES CRIMINAL CODE, TO THE SELLER AND TO THE WAR PRODUCTION BOARD, THAT, TO THE BEST OF HIS KNOWLEDGE AND BELIEF THE UNDERSIGNED IS AUTHORIZED UNDER APPLICABLE WAR PRODUCTION BOARD REGULATIONS OR ORDERS TO PLACE THIS DELIVERY ORDER, TO RECEIVE THE ITEM(S) ORDERED FOR THE PURPOSE FOR WHICH ORDERED, AND TO USE ANY PREFERENCE RATING OR ALLOTMENT NUMBER OR SYMBOL WHICH THE UNDERSIGNED HAS PLACED ON ORDER.

UNDERSIGNED HAS PLACED ON ORDER.

**PURCHASING AGENT**

# Defendant's Exhibit 19.

## TERMS AND CONDITIONS

1. No agreement or other understanding in any way modifying the conditions of this purchase order shall be binding upon Buyer unless made in writing and signed by Buyer's authorized representative. Any waiver of strict compliance with the terms of this order shall not be a waiver of the right to insist upon strict compliance with the terms hereof thereafter.
2. This order, issued under the provisions of Contract No. W-ORD-491 made between Buyer and the United States Government, may be assigned by Buyer to the Government; and if so assigned Buyer's liability hereunder shall cease and Seller shall look to the Government for payment.
3. The Government contract referred to above provides that the Government's contracting officer may at any time make changes in the drawings or specifications as to any articles, material or work covered hereby. If such changes cause an increase or decrease in the amount due under this order, an equitable adjustment shall be made and this order shall be modified in writing accordingly.
4. The Seller shall place all subcontracts and purchase orders for materials and components (including "B" products as defined in the controlled materials plan and other items normally taken direct from suppliers' stocks) required for the performance of this purchase order as promptly as possible and shall schedule deliveries thereof so as to enable it to adhere to, but not unreasonably anticipate, the schedule of deliveries set forth in this purchase order. Each such subcontract or purchase order shall expressly provide that the subcontractor or vendor shall place all its subcontracts and purchase orders as promptly as possible, that the subcontractor or vendor shall adhere to and shall not unreasonably anticipate the schedule of deliveries set forth therein, and that all subcontracts and purchase orders placed by its immediate and mediate subcontractors and vendors shall contain like provisions.
5. If this order is for articles or materials other than standard or commercial articles or raw material, the Seller, in performing the work required hereunder, shall not discriminate against any worker because of race, creed, color or national origin.
6. Seller agrees to be responsible in matters within its control for the safeguarding of all secret, confidential or restricted matters that may be disclosed or that may be developed in connection with the work under this order.
7. No member of or delegate to the Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit arising therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.
8. Seller agrees to comply with all applicable Federal, State or local laws, rules and regulations, including the Walsh-Healey Public Contracts Act (Act of June 30, 1936 - 49 Stat. 2036, as amended), and the Emergency Price Control Act of 1942, as amended; (Act of January 30, 1942 - Public Law 421 - 77th Congress).
9. (A) The Buyer may terminate work under this order in whole or in part at any time by written or telegraphic notice, whenever (1) the Government requests the termination of this order or (2) a contract between the Buyer and a third person, including the Government, requiring for its performance articles or services of the kind or type covered by this order is terminated, in whole or in part, or amended, so as to eliminate or reduce such requirements. Such notice shall state the extent and effective date of such termination; and, upon the receipt thereof, the Seller will, as and to the extent directed by the Buyer, stop work under this order and the placement of further orders or subcontracts hereunder, terminate work under orders and subcontracts outstanding hereunder, and take any necessary action to protect property in the Seller's possession in which the Buyer has or may acquire an interest.  
(B) If the parties cannot by negotiation agree within a reasonable time upon the amount of fair compensation to the Seller for such termination, the Buyer in addition to making prompt payment of amounts due for articles delivered or services rendered prior to the effective date of termination, will pay to the Seller the following amounts without duplication:
  - (1) The contract price for all articles or services which have been completed in accordance with this order and not previously paid for.
  - (2) (I) The actual costs incurred by the Seller which are properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of this order, including the cost of discharging liabilities which are so allocable or apportionable, and (II) a sum equal to 2% of the part of such costs representing the costs of articles or materials not processed by the Seller, plus a sum equal to 8% of the remainder of such costs; but the aggregate of such sums shall not exceed 6% of the whole of such costs. For the purpose of Subdivision (II) such costs shall exclude any charge for interest on borrowings and shall exclude the cost of discharging liabilities for parts, materials and services not received by the Seller before the effective date of termination.
  - (3) The reasonable costs of the Seller in making settlement hereunder and in protecting property in which the Buyer has or may acquire an interest. Payments made under this Subparagraph (B), exclusive of payments under Subdivision (3), shall not exceed the aggregate price specified in this order, less payments otherwise made or to be made.
  - (C) With the consent of the Buyer, the Seller may retain at an agreed price or sell at an approved price any completed articles, or any articles, materials, work in process or other things the cost of which is allocable or apportionable to this order under Subparagraph (B)-(2) above, and will credit or pay the amounts so agreed or received as the Buyer directs. As directed by the Buyer, the Seller will transfer title to, and make delivery of, any such articles, materials, work in process or other things not so retained or sold. Appropriate adjustment will be made for delivery costs or savings therein.
  - (D) The provisions of this Paragraph 9 shall not limit or affect the right of the Buyer to terminate this order for the default of the Seller.
- shall state the extent and effective date of such termination; and, upon the receipt thereof, the Seller will, as and to the extent directed by the Buyer, stop work under this order and the placement of further orders or subcontracts hereunder, terminate work under orders and subcontracts outstanding hereunder, and take any necessary action to protect property in which the Buyer has or may acquire an interest.  
(B) If the parties cannot by negotiation agree within a reasonable time upon the amount of fair compensation to the Seller for such termination, the Buyer in addition to making prompt payment of amounts due for articles delivered or services rendered prior to the effective date of termination, will pay to the Seller the following amounts without duplication:
  - (1) The contract price for all articles or services which have been completed in accordance with this order and not previously paid for.
  - (2) (I) The actual costs incurred by the Seller which are properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of this order, including the cost of discharging liabilities which are so allocable or apportionable, and (II) a sum equal to 2% of the part of such costs representing the costs of articles or materials not processed by the Seller, plus a sum equal to 8% of the remainder of such costs; but the aggregate of such sums shall not exceed 6% of the whole of such costs. For the purpose of Subdivision (II) such costs shall exclude any charge for interest on borrowings and shall exclude the cost of discharging liabilities for parts, materials and services not received by the Seller before the effective date of termination.
  - (3) The reasonable costs of the Seller in making settlement hereunder and in protecting property in which the Buyer has or may acquire an interest. Payments made under this Subparagraph (B), exclusive of payments under Subdivision (3), shall not exceed the aggregate price specified in this order, less payments otherwise made or to be made.
  - (C) With the consent of the Buyer, the Seller may retain at an agreed price or sell at an approved price any completed articles, or any articles, materials, work in process or other things the cost of which is allocable or apportionable to this order under Subparagraph (B)-(2) above, and will credit or pay the amounts so agreed or received as the Buyer directs. As directed by the Buyer, the Seller will transfer title to, and make delivery of, any such articles, materials, work in process or other things not so retained or sold. Appropriate adjustment will be made for delivery costs or savings therein.
  - (D) The provisions of this Paragraph 9 shall not limit or affect the right of the Buyer to terminate this order for the default of the Seller.
10. This order shall be deemed to contain all the provisions required by Subsection (B) of the Renegotiation Act as amended by Section 701 of the Revenue Act of 1943 (Public Law No. 235, 78th Congress, enacted February 25, 1944). In compliance with said Subsection (B) of the Renegotiation Act, Seller shall insert in the suborders specified in said Subsection (B) and made by the Seller after the date of this order either provisions similar to this Paragraph 10 or the provisions prescribed by said Subsection (B) of the Renegotiation Act.
11. When terms of delivery or conditions of this order are F. O. B. our Plant, all transportation charges (including switching charges) shall be paid by Seller.
12. No allowance shall be made for packing, cartage, crating or storage unless stated herein.
13. The United States Government has the right to inspect the goods covered by this order either at the place of manufacture or origin, or at the place of delivery, and acceptance of said goods by Buyer shall be dependent upon the final inspection and acceptance thereof by the authorized representative of the Government. At Buyer's option defective goods may be returned at Seller's expense for full credit or replacement.
14. Seller warrants that the use or sale of the goods, as such, purchased hereunder by Buyer shall not infringe any patent, and agrees to defend any suit brought against Buyer for such infringement and to reimburse Buyer for any loss or recoveries incurred by Buyer because of such suit, including all court costs and attorney's fees. Buyer shall promptly notify Seller of such suit and shall deliver to Seller all papers relating thereto.
15. Seller expressly warrants that all articles, material and work covered by this order shall conform to the specifications, drawings, samples or other description furnished or adopted by Buyer and shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect.
16. In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee, or an assignment for the benefit of creditors of the property of either party, or in the event of breach of any of the terms hereof including the warranties of the Seller, the other party shall be entitled to cancel this order.
17. If this order covers the performance of labor at Buyer's Plant, Seller agrees to indemnify and protect Buyer against all liabilities, claims, or demands for injuries or damages to any person or property growing out of the performance of this order. Seller further agrees to furnish a certificate from its insurance carriers showing that it carries adequate Workmen's Compensation, Public Liability, and Property Damage insurance. Said certificate must show the amount of coverage, number of policy and date of expiration. If Seller is a self insurer, he must have the Department of Labor for Industry in the State in which said labor is to be performed furnish a certificate of same to Buyer.
18. Buyer reserves the right to cancel any portion of this order if not filled as specified, and to postpone time of shipment.
19. Seller agrees to furnish a statement of account to Buyer's Accounting Department as soon as possible after the first of each month.
20. The payment and discount periods, referred to on the face side of this purchase order, are understood to begin only after (1) the arrival of goods at destination and the final inspection and acceptance thereof by Buyer and Government, (2) the receipt by Buyer of properly executed Bill of lading (or shipping paper) and (3) the receipt in triplicate of invoices. Any overshipment or substitution of goods made by Seller shall entitle Buyer to withhold payment for entire shipment pending its approval of such overshipment or substitution without loss of discount privileges. Delay in receiving invoices, also errors, omissions or price discrepancies appearing thereon causing delay in determination of amount due, shall likewise entitle Buyer to withhold payment without loss of discount privileges. Where variance appears between purchase order and invoice in respect of price or payment terms, Buyer shall be entitled to most favorable of such terms.

[fol. 1398] Mr. Bond: There was no evidence, Your Honor, and there is no evidence now that that paragraph was on the order which he produced here in court yesterday. I object to it being received in evidence.

Mr. McRoberts: If the evidence is not here I failed to clarify.

Q. Was the printed matter to which I have directed your attention on the reverse side of the original order of which Plaintiffs' Exhibit M-1 is one of the numerous copies?

Mr. Bond: Let me ask you: This purchase order which is [fol. 1399] marked Plaintiffs' Exhibit M-1, is it a purchase order and company papers which you produced out of your file? A. Yes, sir.

Mr. Bond: Where is the original that you say this is a copy of? A. The vendor has the original.

Mr. Bond: Consequently the original was not produced here in court? A. That is correct.

Mr. Bond: You never saw the original?

A. I can't say of that particular order.

Mr. Bond: And this form which you gave me you say was changed from time to time? A. That is correct.

Mr. Bond: I object, Your Honor, to it being received in evidence in this case, I don't think it has been established.

Mr. McRoberts: Witness testified this particular language was there in this language, or in substance, on all of them, and it is nothing more than a statement order was issued under provision of contract ORD 491 made between the buyer and the United States Government. And I am going to offer the contract in evidence and I am just tieing up the operations of the plaintiffs with the contract.

Mr. Bond: If this original purchase order was sent to the purchaser of this material, you have no recollection of [fol. 1400] seeing it, have you?

A. The original of that particular order?

Mr. Bond: Yes, sir. A. No, sir.

Mr. Bond: As far as you know you never saw it and have no idea what is on it? A. No, sir.

[fol. 1407] Q. Now Mr. Schulte, were you in charge of the books and records and accounts of the United States Cartridge Company, particularly their accounts with respect to the property ownership? A. Yes, sir.

Q. Did the St. Louis Ordnance Plant itself belong to the United States Cartridge Company? A. No, sir.

Q. That belonged to the United States Government?

A. That is correct.

Q. And how about the machinery and equipment in that plant?

A. Belonged to the United States Government, the tools and appliances.

Mr. Bond: Object to that.

Q. Do you know? A. Yes, sir.

Mr. Bond: How does he know? I object to that, and if it is a matter of record I demand the record. I know the Government built the plant and I know the defendant operated the plant, but where the title was to all the equipment--

The Court: Objection sustained.

Q. Mr. Schulte, are you familiar with the facts with respect to the records that were kept of materials and supplies as they came in the plant, and the finished products as they went out? A. Yes, sir.

Q. Will you tell the Court what records were kept, first, of the property and assets of the United States Cartridge Company, and what records of the goods and products?

A. Well, the records of the United States Cartridge Company were the general ledger and auxiliary records pertaining thereto.

Q. Those records, of course, are voluminous? A. Yes, sir.

Q. Was any part of the raw materials or the working process of the finished product at any time carried on these records as an asset of the United States Cartridge Company?

Mr. Bond: Object. The records are the best evidence.

Mr. McRoberts: If you want them down here, we will bring them in.

Mr. Bond: I don't see how there would be any question about some of these being the property of the United States Cartridge Company. I have introduced orders and checks drawn by them on a special account on purchase orders issued by them. They certainly had title to it. They might have been under certain obligations, but they had title to the money they used to pay for the title to the goods when they came.

Mr. McRoberts: I think on this, Judge Bond; this is purely the negative, for I am going to show what the record actually did show there.

[fol. 1409] (Conference off the record at Court's Bench between Court and Counsel.)

The Court: All right, you may proceed.

Q. (Mr. McRoberts) Now Mr. Schulte, I was asking you about the records of the United States Cartridge Company.

A. Yes, sir.

Q. On the records of the United State's Cartridge Company do you have any assets consisting of either the St. Louis Ordnance plant or the machinery and equipment in it, or any of the tools and appliances used in the process out there? A. No, sir.

Mr. Bond: Object.

The Court: Your objection may run to all this testimony.

Mr. Bond: And Your Honor, the ground of my objection is not only to the manner in which the proof is offered but to its immateriality and irrelevancy to the issues in this case.

The Court: Yes, sir.

Q. Now, what about the raw materials used in producing the goods out there? Did the United States Cartridge Company carry, at any time during the operation of that plant, any of these raw materials on its books as an asset of that company? A. No, sir.

Q. Did the company ever claim any title in it or ownership or right to it? A. No, sir.

[fol. 1410] Q. What about working processes? A. No, sir.

Q. And necessary products? A. The same is true.

Mr. Bond: And this that he shows you is a form taken from the files of that company? A. Yes, sir.

Mr. Bond: I object.

The Court: Sustained.

Mr. McRoberts: May I inquire if it is on the ground there is not sufficient connection between these being the form?

The Court: Yes, sir.

Mr. McRoberts: May I inquire further, Mr. Schulte?

Q. These forms were revised from time to time, were they not? A. That is correct.

Q. Do you have out there in your plant copies of the forms as they were used and as they were in effect at different periods? A. Yes, sir.

Q. Will it be possible for you to produce copies of each purchase order as it was in use over the different periods [fol. 1401] of the plant? A. Yes, sir.

Mr. McRoberts: I will withdraw the witness and produce the various forms, so there will be no question.

Mr. Bond: Still object. There is no proof that the matter was on the form set out by the purchaser.

Mr. Bond: Can you give us an estimate how much ammunition was produced during the fours years of the operation of this plant?

Mr. McRoberts: I can give you the exact figure if you want it, Judge.

Mr. Bond: Yes, I would like to know.

Mr. McRoberts: As of August 31, 1945, I believe the correct figure is 6,748,745,110 rounds of cartridges produced.

Mr. Bond: At the St. Louis Ordnance plant?

Mr. McRoberts: That is correct.

Mr. Bond: I will accept that figure.

The Court: What is the figure?

Mr. McRoberts: Six billions.

Mr. Bond: That is all, Mr. Schulte.

## RUSSELL ROLAND CASTEEL

previously sworn on behalf of plaintiffs, testified on behalf of defendants, as follows:

### Direct Examination by Mr. McRoberts:

Q. State your name, please.

[fol. 1402] A. Russell R. Casteel.

Q. Where do you live, Mr. Casteel? A. Alton, Illinois.

Q. And where are you employed?

A. Olin Industries, Incorporated.

Q. Mr. Casteel, what is your connection with the United States Cartridge Company, the defendant in this case?

A. I am now secretary of the company.

Q. And were you an officer of that company from the time it was incorporated?

A. Yes, sir, I was assistant secretary at the time it was incorporated.

Q. Was that a wholly owned subsidiary corporation of the Western Cartridge Company? A. It was.

Q. And now is a wholly owned subsidiary of the Olin Industries, Incorporated? A. That is right.

Q. Olin Industries, Incorporated, being the same corporation as Western Cartridge Company, its name having been changed to Olin Industries, Inc., as a merger? Is that correct? A. That is correct.

Q. Are you familiar with the contract pursuant to which the St. Louis Ordnance plant was operated? A. I am.

[fol. 1403] (A paper is marked "Defendant's Exhibit 20.")

Mr. Bond: I would like to proceed to the point where you mark that for identification, but I understood that we had an understanding the other day, Mr. McRoberts, that before that was offered in evidence I would be shown a copy and be allowed to examine it so that I might state what if any objections I had to it. And I have never had an opportunity to read it.

Mr. McRoberts: Judge Bond did ask me.

Mr. Bond: You took it up with me; you said, "I am going to see you get a copy of this before I offer it in evidence." And I said, "I would like it very much."

Q. What about all of the furniture and supplies which you used in the operation of that plant?

A. Not on the United States Cartridge Company books, we didn't own.

Q. And you never at any time claimed any title to them, or right or interest in them? A. No, sir.

Q. The United States Cartridge Company doesn't have and has never had any fixed assets of any kind?

A. No, sir, never did have.

Q. Or never has of any kind? A. No, sir.

Q. Now, were any books or records kept out there with reference to the machinery, equipment, tools and appliances? A. Yes, sir.

Q. Will you state to the Court what kind of records they were?

A. Well, they were voluminous to begin with, but they were broken down as generally they are, in any kind of an office.

Q. Were they property accountability records?

A. They were what we term property accountability records, and we had our cross records and inventory records.

[fol. 1411] Q. There were records, then, kept of all tools and machinery and personal property on hand at the plant at any time? A. That is correct.

Q. What did those records show as to the ownership of these tools and equipment and appliances?

Mr. Bond: I have to object to that, Your Honor, the records are the best evidence.

The Court: Objection will be sustained.

Mr. McRoberts: I am afraid I am going to have to produce them, and that will be a task.

The Court: Have you plenty of trucks?

Mr. McRoberts: I think the Government has. We can get them. I might state this, Your Honor: we have another contract here under which the Government purchased all of the machinery and equipment in the plant, and it was done with the assistance and direction and advice of the United States Cartridge Company.

Q. Mr. Schulte, can you tell from your records who paid for all of the machinery and tools and appliances? Do you know?

Mr. Bond: Object to that, too, as calling for a conclusion.

The Court: Objection sustained.

Mr. McRoberts: I think, if Your Honor please, I will withdraw it and we will make the type of proof which Judge Bond wants to have in this record. I will withdraw the witness, if I may.

[fol. 1412] Mr. Bond: Since he is on the stand I was going to ask him a few questions.

Cross Examination by Mr. Bond:

Q. I believe one of the previous witnesses testified that the United States Cartridge Company was a wholly owned subsidiary of the Western Cartridge Company, now called Olin Industries, Incorporated. Is that correct?

A. To the best of my knowledge.

Q. And do the accounts of the Olin Industries Company contain any records of the property of the United States Cartridge Company? A. That I wouldn't know.

Q. You would not know that?

A. I haven't seen the records of the Olin Industries.

Q. Who would know that? I am not asking you for the contents, I am asking you if they have any records of the property of the United States Cartridge Company?

A. I wouldn't know.

Mr. McRoberts: Mr. Casteel can answer that question, Judge.

Mr. Bond: You had him on the stand.

Mr. McRoberts: You can ask him that question now.

Mr. Bond: I would like to ask you that question; Mr. Casteel.

Mr. McRoberts: Mr. Schulte is withdrawn.

Mr. McRoberts: I don't recall making that statement to Judge Bond, but so that there is no question about the matter I will furnish you with a copy of this contract, which you may examine over night, and permit you to examine it at your leisure.

Mr. McRoberts: It looks as if I will have to withdraw this witness, Your Honor.

(Witness temporarily withdrawn.)

### WALTER L. SCHULTE

previously sworn on behalf of plaintiffs and now called [a] a witness on behalf of defendants, testified as follows:

#### Direct Examination by Mr. McRoberts:

Q. Mr. Schulte, have you just called to my attention certain papers attached to Plaintiffs' Exhibit M-1? [fol. 1404] A. I have.

Q. And these are part of the files of the company, being part of that particular transaction? A. Yes, sir.

Q. Do you happen to have in your file one of the copies of Plaintiffs' Exhibit M-1, which has the printed matter on the back of it?

A. The eighth copy of acceptance of the order is contained in this file of the original orders.

Q. That is the copy which the vendor accepted and returned to the company? A. That is correct.

Q. And that has the printed terms and conditions on the reverse side of it? A. It does.

Mr. McRoberts: Your Honor please, I believe that the one offer that was made here was that top sheet of Plaintiffs' Exhibit 1. I wish to now offer as Defendant's Exhibit 21 the eighth copy of the same purchase order, "Plaintiffs' Exhibit M-1," including the reverse side of it.

Mr. Bond: Except the general objection that the matter contained in that paragraph is irrelevant, immaterial and incompetent, I have no other objection.

The Court: It will be admitted subject to the objection.

[fol. 1413] RUSSELL R. CASTEEL,  
previously sworn, recalled by plaintiffs for further cross  
examination, testified as follows:

Cross Examination by Mr. Bond:

Q. The United States Cartridge Company, you told us a few minutes ago, is a wholly owned subsidiary of the Olin Industries, Incorporated? A. Yes, sir.

Q. The fact is, it is operated as a department of the Olin Industries? A. It is a separate corporation.

Q. Separate corporation but operated—

A. It is a subsidiary corporation.

Q. Now then, are you familiar with the records of Olin Industries, Incorporated?

A. Yes, sir, I am a member of the Board of Directors.

Q. Have they any records of property and assets of the United States Cartridge Company? A. Yes.

Q. And have they records of all the property and assets of the United States Cartridge Company? A. They have.

Mr. Bond: That is all.

Redirect Examination by Mr. McRoberts:

Q. Now the records about which you speak are the [fol. 1414] records as to the assets of the United States Cartridge Company? A. Yes, sir.

Q. Assets, liabilities, balance sheets and all of that company? A. Yes, sir.

Q. Are all properties belonging to the United States Cartridge Company shown on the books and records of the Olin Industries, Inc., other than the stock of the corporation or any liabilities due from one to the other?

A. We make up a consolidated balance sheet showing Olin Industries and all of the subsidiary companies in which all of the assets are put together into one balance sheet; but the assets of the United States Cartridge Company do not include any real estate or property in the sense of machinery or equipment of any kind.

Q. Let me ask you this question. I think that is what Judge Bond was after; Mr. Casteel, do the books of the Olin Industries, Incorporated, show as an asset of that

Df Ex 21

7/11/46 AD

8TH COPY

THE UNITED STATES CARTRIDGE COMPANY  
ST. LOUIS ORDNANCE PLANT  
ST. LOUIS, MISSOURI

ACCEPTANCE

## PURCHASE ORDER

PURCHASE ORDER NO.

ST. LB

52603

DATE

9/23/44

TO: WESTERN CARTRIDGE COMPANY

ADDRESS: EAST ALTON,  
ILLINOIS

ENTER THIS ORDER, IN ACCORDANCE WITH THE TERMS OF YOUR BID DATED 10, SUBJECT TO THE TERMS AND CONDITIONS ON THE REVERSE SIDE HEREOF. BY ACCEPTANCE OF THIS ORDER, SELLER CERTIFIES THAT TO THE BEST OF HIS KNOWLEDGE, INFORMATION AND BELIEF, THE PRICE OR PRICES CHARGED DO NOT EXCEED THE MAXIMUM PRICE ALLOWANCES FOR THE ARTICLES OR MATERIALS COVERED HERIN, ESTABLISHED BY THE OFFICE OF PRICE ADMINISTRATION OR ANY SUCCESSOR THERETO OR ANY EQUIVALENT GOVERNMENTAL AGENCY. IN THE EVENT IT IS SUBSEQUENTLY DETERMINED THAT THE PRICE OR PRICES CHARGED HEREIN ARE IN EXCESS OF THE PRICE OR PRICES SO ESTABLISHED, SELLER AGREES TO REFUND SUCH EXCESS TO BUYER.

END USE CLASSIFICATION - U. S. A. - PURCHASER, THE ARMY. 5.20. AMMUNITION, SMALL ARMS BELOW 20 MM

ITEM	QUANTITY	DESCRIPTION	PRICE	AMOUNT
1.	14,370,000	LES. CARTRIDGE BRASS FOR CAL. .50 CASE SIZE . STRIP IN ACCORDANCE WITH U. S. C. C. SPEC. #1101- ISSUE 6 DATED DECEMBER 24, 1942. SIZE .254" TO .259" X 5-1/16" WT .5.75		2,263,275 00

2,263,275 00

DC/ SHIP TO: ST. LOUIS ORDNANCE PLANT

FOR ACCOUNT OF: THE UNITED STATES CARTRIDGE COMPANY

4302 GOODFELLO, (20) ST. LOUIS, MISSOURI

SHIP BY \_\_\_\_\_ VIA \_\_\_\_\_

F.O.B. \_\_\_\_\_ - 100%

10TH AND

DAYS AS DEFINED ON REVERSE SIDE

TERMS: NET 30 DAYS - LESS

DELIVERING CC OVER AS SCHEDULED

REQUIRED DELIVERY START BY 10/15/44 COMPLETED BY 10/25/44  
 MARK PACKAGES, CASES, ~~WITH~~ ABOVE PURCHASE ORDER, ~~WITH~~ SPECIAL MARKINGS →  
 PACKAGE, VENDOR'S NAME AND THE → DELIVERY  
 FOLLOWING SPECIAL MARKINGS → POINT

PACKAGING WEIGHT OF EACH  
ACCOUNT NUMBER

RAW MATERIAL

## ACCEPTANCE OF ORDER

IMPORTANT — PLEASE RETURN THIS SHEET PROMPTLY COMPLETELY  
FILLED OUTTHIS ORDER RECEIVED AND ACCEPTED — (DATE) 6

SHIPMENT WILL BE MADE ON (DATE) \_\_\_\_\_ FROM \_\_\_\_\_

VIA \_\_\_\_\_ ALLOCATION

SIGNED

SEE REVERSE SIDE OF THIS SHEET

THE UNDERSIGNED PURCHASER CERTIFIES, SUBJECT TO THE PENALTIES OF SECTION 1911 OF THE UNITED STATES CRIMINAL CODE, TO THE SELLER AND TO THE WAR PRODUCTION BOARD, THAT TO THE BEST OF HIS KNOWLEDGE, BELIEF, THE UNDERSIGNED IS AUTHORIZED UNDER APPROPRIATE WAR PRODUCTION BOARD REGULATIONS OR ORDERS TO PLACE THIS DELIVERY ORDER, TO RECEIVE THE ITEM ORDERED FOR THE PURPOSE FOR WHICH ORDERED, AND TO USE ANY PREFERENCE RATING OR ALLOCATION NUMBER OR SYMBOL WHICH THE UNDERSIGNED HAS PLACED ON ORDER.

THE UNITED STATES CARTRIDGE COMPANY

PURCHASING AGENT

FORM P-150 REV. 7-44

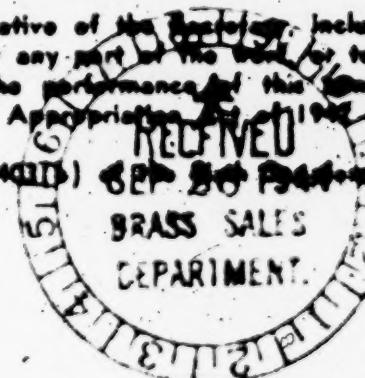
Defendant's Exhibit 21.

**TERMS AND CONDITIONS**

1. This order is tendered under the provisions of Contract No. W-ORD-491 made with the United States Government on the basis of reimbursement by the United States Government and if accepted shall be with the understanding that any contract resulting therefrom shall be assignable to the United States Government and if so assigned the liability of The United States Cartridge Company thereunder shall thereupon terminate and the vendor shall look to the United States Government for payment.
2. No agreement or other understanding in any way modifying the conditions of this purchase order will be binding upon Buyer unless made in writing and signed by Buyer's authorized representative. Any waiver of strict compliance with the terms of this order shall not be a waiver of the right to insist upon strict compliance with the terms hereof thereafter.
3. When terms of delivery or conditions of this order are F.O.B. our plant, all transportation charges [including switching charges] shall be paid by Seller.
4. No allowances will be made for packing, cartage, crating or storage unless stated herein.
5. The United States Government has the right to inspect the material or goods covered by this order either at the place of manufacture or origin, or at the place of delivery, and acceptance of said goods or material by Buyer shall be dependent upon the final inspection and approval thereof by the authorized representative or representatives of the government. At Buyer's option defective material may be returned at Seller's expense for full credit or replacement.
6. Buyer reserves the right to cancel any portion of this order if not filled as specified, and to pursue case of damages.
7. Seller warrants that the use or sale of the material as such purchased hereunder by Buyer will not infringe, directly or indirectly, any patent or copyright held by Buyer or any other person or persons against Buyer for such infringement and to reimburse Buyer for any loss or recoveries incurred by Buyer because of such suit, including all court costs and attorney's fees. Buyer will promptly notify Seller of such suit and will deliver to Seller all papers relating thereto.
8. Seller agrees to furnish a statement of account to Buyer's Accounting Department as soon as possible after the first of each month.
9. Seller expressly warrants that all articles, material and work covered by this order will conform to the specifications, drawings, samples or other descriptions furnished or adopted by Buyer and will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect.
10. In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee or an assignment for the benefit of creditors, of the property of either party, or in the event of breach of any of the terms hereof, including the warranties of the Seller, the other party will be entitled to cancel this order.
11. If this order covers the performance of labor at Buyer's plant, Seller agrees to indemnify and protect Buyer against all liabilities, claims, or demands for injuries or damages to any person or property growing out of the performance of this order. Seller further agrees to furnish a certificate from its insurance carriers showing that it carries adequate Workmen's Compensation, public liability, and property damage insurance. Said certificate must show the amount of coverage, number of policy and date of expiration. If Seller is a self insurer, he must have the Department of Labor for Industry in the state in which said labor is to be performed furnish a certificate of same to Buyer.
12. The Government Contract provides that the Contracting Officer may at any time make changes in the drawings or specifications as to any articles, material or work covered hereby. If such changes cause an increase or decrease in the amount due under this order, an equitable adjustment shall be made and this order shall be modified in writing accordingly.
13. If this order is for articles or materials other than standard or commercial articles or raw material, the Seller, in performing the work required hereunder, shall not discriminate against any worker because of race, creed, color or national origin.
14. Seller agrees to be responsible in matters within its control for the safeguarding of all Secret, Confidential or Restricted matters that may be disclosed or that may be developed in connection with the work under this order.
15. No member of or Delegate to the Congress of the United States of America shall be admitted to any shore or part of this agreement or to any benefit arising therefrom.
16. Seller agrees to comply with all applicable Federal, state or local laws, rules and regulations, including the Walsh-Healey Public Contracts Act (Act of June 30, 1936 - 49 Stat. 2036 - 2039, as amended); Emergency Price Control Act of 1942, as amended; (Act of January 30, 1942 - Public Law 421 - 77th Congress).
17. Buyer's contract, as amended and supplemented from time to time, under which this purchase order is issued, authorizes the Government to terminate such contract, or to reduce the amount of finished products required thereby, without fault on the part of Buyer. In the event that the Government does terminate said contract or reduces its requirements thereunder, Buyer shall have the right to terminate this purchase order or to reduce the quantity of goods or materials specified herein, and in either of such events settlement shall be made in accordance with the provisions of the uniform termination articles adopted or recommended by the Joint Contract Termination Board and approved by the Director of War Mobilization.

In the state in which said labor is to be performed furnish a certificate of same to Buyer.

12. The Government Contract provides that the Contracting Officer may at any time make changes in the drawings or specifications as to any articles, material or work covered hereby. If such changes cause an increase or decrease in the amount due under this order, an equitable adjustment shall be made and this order shall be modified in writing accordingly.
13. If this order is for articles or materials other than standard or commercial articles or raw material, the Seller, in performing the work required hereunder, shall not discriminate against any worker because of race, creed, color or national origin.
14. Seller agrees to be responsible in matters within its control for the safeguarding of all Secret, Confidential or Restricted matters that may be disclosed or that may be developed in connection with the work under this order.
15. No member of or Delegate to the Congress of the United States of America shall be admitted to any shore or part of this agreement or to any benefit arising therefrom.
16. Seller agrees to comply with all applicable Federal, state or local laws, rules and regulations, including the Walsh-Healey Public Contracts Act (Act of June 30, 1936 - 49 Stat. 2036 - 2039, as amended); Emergency Price Control Act of 1942, as amended; (Act of January 30, 1942 - Public Law 421 - 77th Congress).
17. Buyer's contract, as amended and supplemented from time to time, under which this purchase order is issued, authorizes the Government to terminate such contract, or to reduce the amount of finished products required thereby, without fault on the part of Buyer. In the event that the Government does terminate said contract or reduces its requirements thereunder, Buyer shall have the right to terminate this purchase order, or to reduce the quantity of goods or materials specified herein, and in either of such events settlement shall be made in accordance with the provisions of the uniform termination articles adopted or recommended by the Joint Contract Termination Board and approved by the Director of War Mobilization.
18. Terms of payment as stated on obverse side of this purchase order are understood to be effective and the discount period to begin (1) after arrival of material at destination, final inspection and approval as set out above, and (2) receipt of properly executed bill of lading (or shipping papers) and (3) copies of invoice. Delay in receiving invoices, also errors or omissions appearing thereon, causing delay in determination of amount due will entitle Buyer to withhold settlement without losing discount privileges.
19. If this purchase order is for an amount in excess of \$100,000, or if by virtue of this purchase order, or any change therein, Seller has a subcontract with Buyer for an amount in excess of \$100,000 within the meaning of Section 403 of Public Law No. 528, 77th Congress, as amended by the Revenue Act of 1942, Seller agrees as follows:
  - (1) Upon the written demand of the Secretary, at such period or periods when, in the judgment of the Secretary, the profits accruing to Seller under this contract can be determined with reasonable certainty, the Secretary and Seller will renegotiate the contract price to eliminate therefrom any amount found as a result of such renegotiation to represent excessive profits. The demand of the Secretary shall fix a place for renegotiation and a time for the commencement thereof not later than one year after the close of the fiscal year of the subcontract within which completion or termination of the contract, as determined by the Secretary, occurs.
  - (2) Seller will furnish to the Secretary such statements of actual cost of production and such other financial statements, at such times and in such form and detail, as the Secretary may prescribe, and will permit such audits and inspections of its books and records as the Secretary may request.
  - (3) Any amount of the contract price found as a result of such renegotiation to represent excessive profits shall, as directed by the Secretary:
    - (A) Be deducted by Buyer from payments otherwise due to Seller under this contract; or
    - (B) Be paid by Seller directly to the Government, if paid to him; or
    - (C) Be eliminated through reductions in the contract price or otherwise.
  - (4) Seller agrees that Buyer shall not be liable to Seller for or on account of any amount paid to the Government by Seller or deducted by Buyer from payments otherwise due under this contract, pursuant to directions from the Secretary in accordance with the provisions of this Paragraph. Under its contract with the Government, Buyer is obligated to pay, or credit to the Government all amounts withheld by it from Seller hereunder.
  - (5) Seller agrees (a) upon direction of the Secretary, to include in any subcontract hereunder sections (1) to (6) inclusive of this paragraph 19, and (b) to make no subdivisions of any contract or subcontract for the purpose of evading the provisions of this section (5), and (c) to repay to the Government the amount of any reduction in the contract price of any such subcontract which results from renegotiation thereof by the Secretary and which the Secretary directs Seller to withhold from payments otherwise due under such subcontract and actually unpaid at the time Seller receives such direction.
  - (6) As used in this Paragraph:
    - (a) The term "Secretary" means the Secretary of War or any duly authorized representative of the Secretary, including the Contracting Officer.
    - (b) The term "subcontract" means any purchase order or agreement to perform all or any part of the work, or to make or furnish any material, part, assembly, machinery, equipment or other personal property, required for the performance of this contract, when properly made or accepted pursuant to Section 403 (i) of the Sixth Supplemental National Defense Appropriation Act of 1942, as amended, and Title 31, Section 801 of the Revenue Act of 1942.
    - (c) The terms "renegotiate" and "renegotiation" have the same meaning as in section 403 (b) of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.
    - (d) The term "this contract" means this contract as modified from time to time.



BRASS SALES  
DEPARTMENT

MAIL DEPT.

company any of the property of the St. Louis Ordnance Plant, or any of its machinery and equipment, and tools and appliances, or any raw materials that are now or ever were, or any working process, or any finished product?

A. They do not.

Q. We are speaking now of the books of the Olin Industries. A. Well, they do not.

[fol. 1415] Q. I am going to ask you that specifically, if it does appear on the books of the Olin Industries?

A. No, sir.

Q. Referring to the books of the United States Cartridge Company, do any of the properties of that kind, have they ever appeared on any records of the United States Cartridge Company as an asset? A. They have not.

Mr. Bond: To that I object to.

The Court: Objection sustained.

Mr. McRoberts: That is all.

Mr. McRoberts: Your Honor, until I can produce some records, I suggest we adjourn.

The Court: Announce an adjournment until tomorrow morning at ten o'clock.

Thereupon, at 4:30 P. M., July 11, 1946, an adjournment was taken to 10 A. M., July 12, [1947]. The proceedings were then resumed as follows:

(Witness Russell Casteel resumes the witness stand.)

Q. (Mr. McRoberts) Mr. Casteel, I will ask you whether or not the Western Cartridge Company performed any service in connection with the supervision, direction and control of the production aspects of the layout engineering and construction of the St. Louis Ordnance Plant?

Mr. Bond: Objected to as irrelevant, incompetent and immaterial. The Western Cartridge Company is not a [fol. 1416] party to this case.

(Last preceding question read.)

Mr. McRoberts: I propose to show the fact by this witness and by the contract pursuant to which these services were rendered, the facts with reference to acquisition of all of the machinery and equipment and tools and appliances.

The Court: You will connect this up?

Mr. McRoberts: Yes, sir.

The Court: Well, he may answer subject to the objection.

A. They did.

Q. Did they render this service pursuant to a contract with the United States of America? A. They did.

(A contract is marked "Defendant's Exhibit 22.")

Mr. Bond: It won't be necessary for me to continue to object, the record may show my objection to all of this line of testimony of the Cartridge Company.

Q. Mr. Casteel, I show you a document which has been identified as Defendant's Exhibit 22 and ask you if that is an original, signed copy of the contract pursuant to which these services were rendered? A. It is.

Mr. McRoberts: I offer in evidence, if Your Honor please, Defendant's Exhibit No. 22 in its entirety, and I direct Your Honor's attention particularly to this portion: The contract [fol. 1417] is dated December 5, 1940, and contains these recitals:

"Whereas, the Government contemplates entering into contracts, hereinafter referred to as collateral contracts, with other parties for the construction, including the designing, engineering, installation, and manufacturing facilities incident thereto or a plant hereinafter described in Title One.

"And Whereas, the Government desires to have the contractor as an independent contractor on a fixed price, lump sum, basis, furnish management service covering supervision, direction and control of the production aspects of the layout, engineering and construction, including plant and equipment layouts for such plant, and the training of the key personnel

and as an independent contractor on a cost-plus and fixed-fee basis, procure and supervise the layout and installation of equipment."

And then summarized in Title One, there is a description of the plant which I believe we will all admit is the St. Louis Ordnance Plant. Then under Article 1-b, The character and extent of the service: "It is provided that the contractor shall determine"—the contractor being the Western Cartridge Company—"shall determine the requirements for a plant of the type and capacity described in Article One hereof, the layout, engineering and construction and the installation of equipment which would be provided under the collateral contracts, and shall manage, supervise, direct and control the production aspects of [fol. 1418] layout engineering and construction, including plant and equipment layouts of said plant."

Mr. Bond: Provides for the payment to the contractor of a fixed fee for the service.

Mr. McRoberts: And Title 2 there is a detail description of the service in connection with the training of key personnel. Then in Title 3, under the caption "Procurement of Equipment and Supervision and Design and Plans of Installation," it is provided in Article 3a, paragraph 1:

"The contractor shall as an independent contractor, and not as an agent of the Government, purchase or procure and supervise the engineering and layout of all machinery, jigs, fixtures, tools, gauges, testing equipment and miscellaneous manufacturing and production equipment, except utilities, necessary for the plant of the type and capacity described in Article 1. All of the above being sometimes hereinafter referred to as 'equipment.'"

And later there is a provision that that equipment shall be listed and schedules attached thereto.

"It is provided that the Government reserves the right to furnish any of this equipment itself instead of having it acquired under this contract. It is provided that in the performance of the work provided for in Title 3, the contractor shall at all times advise

and consult with the Contracting Officer, he being the Government representative."

[fol. 1419] And finally, "that the extent and character of the work to be done by the contractor under this Title Three shall be subject to the approval of the Contracting Officer to whom the contractor shall report and be responsible."

It is then provided that "the Government shall bear all cost and expense of every character and description incurred by the contractor under this Title Three."

There is a definition of what shall be considered cost and expense. There is a provision whereby the Government may advance the money with which to make these purchases, and how that money shall be handled and the restricted use. I am on page 8 now. And finally, it is provided with reference to all this equipment, being the material acquired under Title Three:

"The title to all work under this Title Three shall be in the Government. Likewise, upon delivery at the site of the work or at an approved storage site, to all purchased materials, tools, machinery, equipment and supplies for which the contractor shall be entitled to be reimbursed under Title Four hereof, shall vest in the government. The Government shall bear all risks incident to such ownership. These provisions as to title being vested in the Government shall not operate, however, to relieve the contractor from any duties imposed upon it under the terms of this contract."

Mr. Bond: Your Honor please, I desire to object to the introduction in evidence of this contract generally because [fol. 1420] the contract itself as described by Counsel is irrelevant, immaterial and incompetent to any issues raised by the pleadings in this case; and further, because it is obvious under construction of the Fair Labor Standards Act that no private agreement between these contracting parties can either affect the character of these goods as commerce; nor can it affect the classification to which these people are entitled, nor the overtime compen-

sation to which they may be entitled under the Act. And I think that this private arrangement between the Government and a corporation not a party to this suit in reference to management, service and training of key personnel is wholly incompetent, irrelevant and immaterial, and [his] no place in this case.

The Court: It will be admitted subject to the objection.

[fol. 1421] (Defendant's Exhibit 22.)

Contract W-ORD-481

Fixed-Price (Lump Sum)

Management Service and Training of [Key] Personnel  
and

Cost-Plus-A-Fixed-Fee Procurement of  
Equipment Contract

War Department

Contractor: Western Cartridge Company, East Alton,  
Illinois

Fixed-Price (Lump-Sum) for Management Service: \$313,-  
000.00 under Title I.

Fixed-Price (Lump-Sum) for Training Key Personnel:  
\$1,300,000.00 under Title II.

Fixed-Fee for Procuring Equipment: \$495,000.00 under  
Title III.

Contract for: Management service covering supervision;  
direction and control of the production aspects of the  
layout, engineering and construction (including plant  
and equipment layouts) of a plant for the manufacture  
of Caliber .30 and Caliber .50, Small Arms Ammunition  
of certain types; training of key personnel; and procure-  
ment, supervision of layout, and supervision of installa-  
tion (including supervision of plans therefor) of manu-  
facturing facilities.

Place: St. Louis, Missouri

Estimated Cost of Procurement of Equipment: \$16,500,-  
000.00 under Title II.

Payment [of] be made by the Finance Officer, U. S. Army,  
at: St. Louis, Missouri

The supplies, equipment and services to be obtained  
by this instrument are authorized by, are for the pur-  
pose set forth in, and are chargeable to the following  
Procurement Authorities, the available balances of  
which are sufficient to cover the cost of the same.

ORD 7669 P99 A 0141-01

ORD 7670 P00 A 0141-01

ORD 8025 (11-0270 A 1005-01)

L. H. CAMPBELL, JR.,  
Brig. Gen., U. S. Army.

This contract is authorized by the following laws:

Act of July 2, 1940 (Public No. 703, 76th Cong.)

[fol. 1422] Fixed-Price (Lump-Sum)

Management Service and Training of Key Personnel  
and

Cost-Plus-A-Fixed-Fee Procurement of  
Equipment Contract

This Contract, entered into this 5th day of December,  
1940, by the United States of America, hereinafter called  
the Government, represented by the Contracting Officer  
executing this contract, and Western Cartridge Company,  
East Alton, Illinois, a corporation organized and existing  
under the laws of the State of Delaware, with its principal  
office in East Alton, Illinois, hereinafter called the Contractor,  
witnesseth that:

Whereas, The Government contemplates, entering into  
contracts (Hereinafter referred to as the "Collateral Con-  
tracts") with other parties for the construction, including  
designs and engineering, and installation of manufacturing  
facilities incident thereto, of a plant hereinafter described  
in Title I; and

Whereas, the Government desires to have the Contractor,  
as an independent Contractor on a fixed-price (lump-sum)  
basis, furnish management service covering supervision,

direction and control of the production aspects of layout, engineering, and construction (including plant and equipment layouts) of said Plant and train key personnel; as an independent contractor on a cost-plus-a-fixed-fee basis procedure, and supervise the layout and installation of equipment; and

Whereas, the accomplishment of the above-described work under a contract entered into after negotiations approved by the [Secretary] of War, and without advertising for proposals, is authorized by law; and

Whereas, as a result of such negotiations, the Secretary of War has directed that the Government enter into such a contract with the Contractor for the accomplishment of the above-described work:

Now, Therefore, the parties hereto do mutually agree as follows:

[fol. 1423]

## Title I.

### Management Service.

#### Article I-A—Description of Plant.

The construction project (hereinafter referred to as "the Plant") shall comprise a plant located at one or more places at or near St. Louis, Missouri, for the manufacture of Caliber .30 and Caliber .50 Ammunition of certain types (hereinafter sometime referred to as the "Ammunition") as specified in Title I of a certain contract of even date herewith between the Government and The United States Cartridge Company, a wholly-owned subsidiary of the Contractor, having a daily capacity as follows:

2,000,000 rounds packed and ready for shipment of Caliber .30 Ammunition, of which [sixty-five] percent (65%) is to be Ball, twenty percent (20%) Armor Piercing, and fifteen percent (15%) Tracer Cartridges;

1,200,000 rounds packed and ready for shipment of Caliber .50 Ammunition, of which eighty percent (80%) is to be Armor Piercing and twenty percent (20%) Tracer Cartridges.

Said Plant shall include parts manufacturing and loading buildings, powder storage area separate from manufacturing and loading units and removed from populous area, administration buildings, training school, magazines, shops, railroads, (including connections, sidings and industrial railroads) roads, curbs, sidewalks, sewers, planting, steam lines, air lines, electric lines, telephone lines, fencing, lighting power house, water system, staff dwellings, cafeterias, guard quarters, fire fighting and housing thereof, and other buildings necessary or appropriate for a Plant of the approximate capacity aforesaid, with storage buildings in connection with the manufacturing and loading units adequate for about one (1) day's supply of incoming powder and twenty days' (20) supply of other materials and [amount] two (2) days' production of finished product. There shall be included a testing range at least 2000 yards in length with adequate safety width and length, or arrangements made for such testing elsewhere, with all necessary buildings, instruments, and equipment for testing. The powder storage area shall be of such capacity as to provide about thirty (30) days' storage of powder and about thirty (30) days' storage of finished Ammunition. The said Plant shall conform, insofar as is practicable, with the designs, drawings, specifications, details, standards and safety practices which are on file in the offices of The Quartermaster General or Chief of Ordnance and which shall be furnished to the Contractor. The estimated total cost of said Plant, fully equipped, based on estimates on file in the Office of the Chief of Ordnance and the Quartermaster General (including acquisition of site,) is Twenty Eight Million Seven Hundred Eighty-Eight Thousand Seven Hundred Dollars (\$28,788,700.00). The Contractor does not guarantee the correctness of the estimate.

[fol. 1424] Article I-B—Character and Extent of Services.

1. The Contractor shall determine the requirements for a Plant of the type and capacity described in Article I-A hereof, the layout, engineering, construction, and installation of equipment which will be provided under the Collateral Contracts; and shall manage, supervise, direct and control the production aspects of the layout, engineering and construction (including plant and equipment layouts) of said Plant.

2. The extent and character of the work to be done by the Contractor under this Title I shall be subject to the approval of the Contracting Officer to whom the Contractor shall report and be responsible. In the event that there should be any dispute with regard to the extent and character of the work to be done, the decision of the Contracting Officer shall govern, but the Contractor shall have the right of written appeal pursuant to the provisions of Article V-L of Title V hereof.

3. In the performance of the work provided for in Section 1 of this Article I-B, the Contractor shall at all times advise and consult with the Contracting Officer for the collateral Contracts executed for the design, engineering, construction and design and installation of equipment in the Plant. The Collateral Contract with the Architect-Engineer shall expressly provide that all work and services thereunder shall be performed subject to consultation with and advice from the Contractor herein, as provided in this Title I.

4. The Government shall furnish the Contractor such available schedules of preliminary data, layout sketches, and other available information respecting machinery, equipment, tools, gages, etc., outside utilities and equipment, and shall make available to the standards and safety practices as are on hand in the offices of The Quartermaster General or the Chief of Ordnance and are applicable to the design, construction, and equipping of the said Plant.

5. All notes and other data used by the Contractor in connection with the work under this Title I are to become the property of the Government and the Government shall have full right subject to the provisions of Article V-O hereof to use said notes and other data for any purpose it may desire without any claim on the part of the Contractor for additional compensation. All such notes and other data concerning the design, construction and equipping of the Plant shall be delivered to the Government whenever requested by the Contracting Officer and, furthermore, access to such notes and data shall be restricted to trusted and duly authorized representatives of the Government and of the Contractor. It is further understood

that such plans and designs shall be furnished to the [fol. 1425] Architect-Engineer or the Construction Contractor under the Collateral Contracts on the condition that they shall not use or disclose the same except in the performance of the Collateral Contracts or for the use of the Government.

6. The Government shall provide suitable office space and the necessary utilities on the site of the Plant, under the Collateral Contracts, for the use of the Contractor's field organization during the period covered by the work and services under this Title I.

#### Article I-C—Estimates.

It is estimated by the parties hereto that the work under this Title I will be completed within ten (10) months from the date of this contract. It is expressly understood, however, that the Contractor does not guarantee the correctness of this estimate which was arrived at as a result of negotiation between the Government and the Contractor.

#### Article I-D—Consideration.

1. As complete consideration for its undertaking under this Title I the Contractor shall receive the fixed-price (lump-sum) of Three Hundred Thirteen Thousand Dollars (\$313,000.00), which sum has been determined by negotiation between the Contractor and the Chief of Ordnance.

2. The consideration provided in section 1 of this Article I-D shall be paid to the Contractor in ten (10) equal monthly installments of Thirty-One Thousand Three Hundred Dollars (\$31,300.00) per month, the first installment to be paid at the close of the calendar month during which this agreement is executed. In the event of termination of this contract, any installments of said amount which accrue after the close of the calendar month in which such termination occurs, shall be cancelled.

[fol. 1426]

**Title II.****Training of Key Personnel.****Article II-A—Statement of Work.**

1. Concurrently with the performance of the work required of it under Title I hereof, the Contractor shall hire the key personnel necessary for the supervision, management and operation of the Plant, including, but not limited to the classifications set forth in Schedule A attached hereto and made a part hereof, and shall proceed to train such personnel in all the duties and functions of their respective positions, and shall insure the readiness of an efficient and trained group of key personnel at any time when the Plant shall be put into operation under the provisions of the contract of even date herewith, between the Government and The United States Cartridge Company.

2. The extent and character of the work to be done by the Contractor under this Title II shall be subject to the approval of the Contracting Officer. In the event that there should be any dispute with regard to the extent and character of the work to be done, the decision of the Contracting Officer shall govern, but the Contractor shall have the right of written appeal pursuant to the provisions of Article V-L of Title V hereof.

**Article II-B—Consideration.**

1. As complete consideration for its undertaking under this Title II the Contractor shall receive the fixed-price (lump-sum) of One Million Three Hundred Thousand Dollars (\$1,300,000.00), which sum has been determined by negotiation between the Contractor and the Chief of Ordnance.

2. The consideration provided in section 1 of this Article II-B shall be paid to the Contractor in twelve (12) equal monthly installments of One Hundred Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$108,333.33) per month, the first installment to be paid at the close of the calendar month, during which this agreement is executed. In the event of termination of this contract any installments of said amount which accrue after the close of the calendar month in which such termination occurs, shall be cancelled.

[fol. 1427] Article II-C—Eight-Hour Law—Applicable to Titles I and II.

No laborer or mechanic doing any part of the work contemplated by Titles I and II of this contract, in the employ of the Contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this Article. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this article a penalty of five dollars shall be imposed upon the Contractor for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this article, and all penalties thus imposed shall be withheld for the use and benefit of the Government; provided, that this stipulation shall be subject in all respects to the exceptions and provisions of U. S. Code, title 40, sections, 321, 324, 325, and 326, relating to hours of labor, as in part modified by the provisions of Section 303 of Public Act No. 781, 76th Congress, approved September 9, 1940, relating to compensation for overtime.

[fol. 1428] Title III.

Procurement of Equipment and Supervision of Design  
and of Plans for Installation Thereof.

Article III-A—Statement of Work.

1. The Contractor shall, as an independent contractor and not as an agent of the Government, purchase, produce, and supervise the engineering and layout of all ma-

chinery, jigs, fixtures, tools, gages, testing equipment and miscellaneous manufacturing and production equipment (except utilities) necessary for a Plant of the type and capacity described in Article I-A of Title I hereof (all of the above being sometimes hereinafter referred to as "Equipment"); shall supervise the plans to be drawn for the installation of said Equipment by the Architect Engineer under the Collateral Contracts; and shall do all other things necessary and incident to the purchase or production, supervision of the engineering and layout, and supervision of the plans for the installation of the Equipment of the Plant. Said Equipment shall be listed in Schedule B, attached hereto and made a part hereof, but such listing in Schedule B shall not limit the general obligation of the Contractor under this Article III-A nor shall the Contractor be limited to the equipment therein specified in complying with this section, but any changes in said Schedule B shall have the written approval of the Contracting Officer.

2. The Government reserves the right to furnish any Equipment necessary for the equipping of the Plant, provided said Equipment shall be of a suitable type and in satisfactory operating condition, upon so notifying the Contractor prior to any commitment by the latter therefor. In the equipping of the Plant the Contractor shall be free (but shall not be obligated) to use any material and equipment of its own manufacture, upon advising the Government in advance as to the prices at which and the conditions upon which such material and equipment will be supplied. In the event the Government is able to obtain material and equipment of equal quality and quantity at a lower price or on more favorable conditions from any responsible competitive source or from its own manufacture, it may undertake to do so upon so informing the Contractor within ten (10) days after being advised of the Contractor's price for such material, the Contractor first having the right to meet such lower price or more favorable conditions.

3. In the performance of the work provided for in this Title III, the Contractor shall at all times advise and consult with the Contracting Officer for the Collateral Contracts excepted for the design, engineering and construc-

tion of the Plant, and installation of Equipment therein. All such Collateral Contracts shall expressly provide that all work and services thereunder shall be subject to consultation with and advice from the Contractor herein.

[fol. 1429] 4. The Government shall furnish the Contractor such available schedules of preliminary data, layout sketches, and other available information respecting the work to be done under this Title III, and shall make available to the Contractor such Government designs, drawings, specifications, details, standards and safety practices as are on hand in the offices of The Quartermaster General or the Chief of Ordnance and which are applicable to the work to be done under this Title III.

5. The title to all work under this Title III, shall be in the Government. Likewise, upon delivery at the site of the work, or at an approved storage site, title to all purchased materials, tools, machinery, equipment and supplies, for which the Contractor shall be entitled to be reimbursed under Title IV hereof, shall vest in the Government. The Government shall bear all risk incident to such ownership. These provisions as to title being vested in the Government shall not operate however, to relieve the Contractor from any duties imposed upon it under the terms of this contract.

6. The Contractor hereby agrees that it will:

(a) Procure and thereafter maintain such surety bonds and insurance in such forms and in such amounts and for such periods of time as the Contracting Officer may require in writing, provided same are obtainable.

(b) Procure all necessary permits and licenses whenever obtainable; obey and abide by all applicable laws, regulations, ordinances and other rules of the United States of America, of the State, Territory or sub-division thereof wherein the work is done, or of any other duly constituted public authority.

(c) Unless the provisions of this paragraph (c) are waived in writing by the Contracting Officer, reduce to writing every contract in excess of Two Thousand Dollars

(\$2000.00) made by it for the purpose of the work under this Title III for services (except contracts for employment), materials, supplies, machinery, or equipment, or for the use thereof; insert therein a provision that such contract is assignable to the Government; make all such contracts in its own name, and not bind or purport to bind the Government or the Contracting Officer thereunder.

(d) Enter into no sub-contract for any portion of the work without the written approval of the Contracting Officer. Sub-contracts are defined as contracts entered into by the Contractor with others which involve the performance, wholly or in part, at the site of the work, of some part of the work described in this Title III.

[fol. 1430] 7. If the performances of any work under this Title III is interrupted or prevented by reason of inability to obtain equipment or essential materials, or by reason of labor shortage or labor disputes, from whatever cause arising, and whether or not the demands of the employees involved shall be reasonable and within the Contractor's power to concede, or by reason of fire, explosion, accident, sabotage, or any cause beyond its control, whether of a nature similar or dissimilar to those hereinbefore set forth, the Contractor shall be excused from performing work while or to the extent that it is prevented from so doing by one or more of such causes, and all such work shall be performed as soon as practicable after such disability is removed. It is further understood and agreed that the Contractor shall not be liable for any failure or delay in the performance of this contract, or accountable for the loss or destruction of or damages to any materials, tools, machinery, equipment, supplies, or other property located or stored at said Plant except to the extent that such failure, delay, loss, destruction or damage is due to the personal failure on the part of the corporate officers of the Contractor or of other representatives of the Contractor having supervision and direction of the work as a whole under this Title III, to exercise good faith or that degree of care which they normally exercise in the conduct of the Contractor's business.

8. The extent and character of the work to be done by the Contractor under this Title III shall be subject to the approval of the Contracting Officer to whom the Contractor shall report and be responsible. In the event that there should be any dispute with regard to the extent and character of the work to be done, the decision of the Contracting Officer shall govern, but the Contractor shall have the right of written appeal pursuant to the provisions of Article V-L of Title V hereof.

#### Article III-B—Walsh-Healey Act.

1. The following representations and stipulations pursuant to the Walsh-Healey Public Contracts Act (Act of June 30, 1936; 49 Stat. 2036; 41 USC 35-45), shall apply to the work under Title III of this contract:

a. The Contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

b. All persons employed by the Contractor in the manufacture [of] furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, [fol. 1431] supplies, articles, or equipment are to be manufactured or furnished under the contract; Provided, However, that this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

c. No person employed by the Contractor in the manufacture [of] furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, unless such person is

paid such applicable overtime rate as has been set by the Secretary of Labor.

d. No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the Contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

e. No part of the contract will be performed, nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this sub-section.

f. Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or under-payment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions,

rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums [fol. 1432] were withheld or recovered: Provided, That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice [bo] the Contractor of the withholding or recovery of such sums of the United States of America.

g. The Contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

b. The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of \$10,000.00.

2. Stipulation (b) of Section 1 of this Article III-B is inoperative due to lack of determination by the Secretary of Labor of minimum wage standards for the industry involved.

#### Article III-C: Estimates.

It is estimated that the total cost of the work covered by this Title III will be approximately Sixteen Million Five Hundred Thousand Dollars (\$16,500,000.00), exclusive of the Contractor's Fee, and that the work herein contracted for will be ready for utilization in the manufacture of Small Arms Ammunition within Fifteen (15) Months from the date of this contract. It is expressly understood, however, that the Contractor does not guarantee the correctness of either of these estimates. The estimated total cost set forth above is based upon a detailed estimate agreed upon by both the Government and the Contractor, a copy of which is on file in the office of the Chief of Ordnance.

### Article III-D. Consideration.

In consideration for its undertaking under this Title III, the Contractor shall receive the following:

(a) Reimbursement for expenditures as provided in Title IV.

(b) A fixed fee in the amount of Four Hundred Ninety-five Thousand Dollars (\$495,000.00), which shall constitute complete compensation for the Contractor's services, including profit.

[fol. 1433]

### Title IV.

#### Cost of the Work Under Title III.

##### Article IV-A—Reimbursement for Contractor's Expenditures.

1. The Government shall bear all costs and expenses of every character and description incurred by the Contractor under Title III, when approved in advance or subsequently ratified by the Contracting Officer, which costs and expenses shall include but shall not be limited to the following items, to wit:

(a) All materials, tools, machinery, equipment, designs, plans and supplies necessary for either temporary or permanent use for the benefit of the work under Title III.

(b) All subcontracts made in accordance with the provisions of Title III.

(c) Transportation charges on materials, supplies and equipment, including loading and unloading, necessary storage, and transportation charges prepaid by the Contractor on outgoing shipments.

(d) Expenses of expediting the production and transportation of material and equipment.

(e) Salaries of resident engineers, superintendents, accountants, and all other employees of the Contractor in connection with the work. In case the full time of any employee of the Contractor is not applied to the work, his salary shall be included in this item only in proportion to the actual time applied thereto.

(f) Premiums on such bonds as may be required under Section 6 of Article III-A and under the provisions of Article IV-C and such insurance policies as may be required under this contract; the cost of all public liability, employer's liability, workmen's compensation, fidelity, fire, theft, burglary and other insurance that the contracting officer may approve as reasonably necessary for the protection of the Contractor.

(g) Losses and expenses, not compensated by insurance or otherwise (including settlements of claims between the Contractor and third parties, made with the written consent of the Contracting Officer), actually sustained by the Contractor in connection with the work and found and certified by the Contracting Officer as not being due to the personal failure on the part of the corporate officers of the Contractor or of other representatives of the Contractor having supervision and direction of the work as a whole, to exercise good faith or that degree of care which they normally exercise in the conduct of the Contractor's business.

[fol. 1434] (h) The cost of replacing any of the work destroyed or damaged, and not compensated by insurance, but expenditures under this item must have the written authorization of the Contracting Officer in advance. Such replacing shall be considered as additional work under the provisions of Article V-N.

(i) Payments made by the Contractor under the Federal Social Security Act (employer's contributions), and any applicable state or local taxes, permits, license fees, or other charges which the Contractor may be required to pay on account of or in connection with the work under Title III hereof, and, if approved in writing by the Contracting Officer in advance, royalties on patents, including those owned by the Contractor; and expenses incident to patent searches which may be necessary under the provisions of Article V-O hereof.

(j) Such portion of the transportation, traveling and hotel expense of engineers and other employees of the Contractor as is actually incurred in connection with this work. It is agreed that all allowances of cost under this item shall conform to and not exceed the ordinary allow-

ances authorized by the contractor for its employees in the normal conduct of its business.

(k) Accounting (including salaries and other expenses) in connection with special audits of accounts for the Government in connection with the work hereunder.

(l) Such other items as should, in the opinion of the Contracting Officer, be included in the cost of the work. When such an item is allowed by the Contracting Officer, it shall be specifically certified as being allowed under this paragraph.

2. The Government reserves the right to pay directly to persons concerned all sums due from the Contractor for labor, materials, or other charges.

3. No salaries of the Contractor's executive officers, no part of the expense incurred in conducting the contractor's main office or regularly established branch offices, and no overhead expenses of any kind, except as specifically authorized in Section 1 of Article IV-A of this Title IV shall be included in the cost of the work; nor shall any interest on capital employed or on borrowed money be included in the cost of the work.

[fol: 1435] 4. The Contractor shall, to the extent of its ability, take all cash and trade discounts, rebates, allowances, credits, salvage, commissions and direct bonifications, and when unable to take advantage of such benefits, it shall promptly notify the Contracting Officer to that effect and the reason therefor. In determining the actual net cost of articles and materials of every kind required for the purpose of this contract, there shall be deducted from the gross cost thereof all cash and trade discounts, rebates, allowances, credits, salvage, commissions and direct bonifications which have accrued to the benefit of the Contractor. Any such benefits lost shall be deducted from gross costs to the extent that their loss is due to the personal failure on the part of the corporate officers of the Contractor [of] or other representatives of the Contractor, having supervision and direction of the work as a whole, to exercise good faith or that degree of care which they normally exercise in the conduct of the Contractor's busi-

ness. Any such benefits lost through the fault of the Government or lost through compliance with the provisions of Section 5 of Article IV-C shall not be deducted from the gross costs.

## Article IV-B—Payments.

### 1. Reimbursement for Cost.

- (a) All payments hereunder shall be subject to the provisions of Section 2 of Article IV-C.
- (b) The Government shall currently reimburse the Contractor for expenditures made in accordance with Article IV-A of this Title IV upon certification to and verification by the Contracting Officer of the original certified payrolls for labor, or the original paid invoices for materials, or other original papers, or other evidence satisfactory to the Contracting Officer. Except as otherwise provided in Section 1 of Article IV-A, reimbursement will be made weekly but may be made at more frequent intervals if the conditions so warrant.

### 2. Payment of the Fixed Fee.

The Fixed fee of Four Hundred Ninety-five Thousand Dollars (\$495,000.00) provided in Article III-D of Title III hereof shall be paid in fifteen (15) equal monthly installments, the first such installment to be paid at the close of the calendar month during which this contract is executed, the next thirteen (13) such installments to be paid at the close of each succeeding calendar month, and the fifteenth (15th) such installment to be paid promptly upon the completion and acceptance of the work under Title III. In the event of termination of this contract, any installments of said amount which accrue after the close of the calendar month in which such termination occurs, shall be cancelled.

### 3. Payments by Contractor.

If any bills for the purchase of material, machinery or equipment, incurred by the Contractor or by any Sub-contractor hereunder are not promptly paid by the Con-

tractor or Sub-contractor as the case may be, and should the Contractor neglect or refuse to pay such bills or payrolls or to direct any Sub-contractor to pay such [fol. 1436] bills within five (5) days after notice from the Contracting Officer so to do, the Government shall have the right, provided the same are not disputed in good faith by the Contractor or Sub-contractor, to pay such bills directly.

#### 4. Failure of Government to Make Payments.

In the event of failure of the Government to make any payments or advances as provided in this Title IV (other than by reason of normal delay in the payment of current expenditures incident to the checking by the disbursing officer of statements of such expenditures), the Contractor may suspend its performance hereunder until the full amount of any deficiency shall have been paid. The exercise of this right shall be without prejudice to any other rights or remedies of the Contractor on account of such failure by the Government; and failure of the Contractor to exercise such right shall not constitute a waiver thereof with respect to any continuing or subsequent failure on the part of the government.

#### Article IV-C—Advances.

1. At any time, and from time to time, after the execution of this Contract the Government, at the request of the Contractor, and subject to the approval of Chief of Ordnance as to the necessity therefor, shall advance to the Contractor, without payment of interest thereon by the Contractor, a sum not in excess of thirty percent (30%) of the estimated cost of the work under Title III hereof (as increased or decreased pursuant to the provisions of Article V-N of Title V). When approximately sixty percent (60%) of said estimated cost (as increased or decreased pursuant to the provisions of Article V-N of Title V) shall have been paid under Section 1 of Article IV-B, a revised estimate of such costs shall be made by the Contractor; and if it appears that the then estimated cost exceeds the amount of the original estimate (increased or decreased as provided above), and the revised estimate

is approved by the Chief of Ordnance, the Government shall under the conditions stated above advance to the Contractor without interest, not to exceed thirty percent (30%) of such excess. Such advance or advances shall be made in each case upon the furnishing of such surety bonds in such penal sums not exceeding the total aggregate advance as the Secretary of War may prescribe; provided that the Secretary of War shall have prescribed the furnishing of a surety bond in connection with such advances as security additional to that provided for in this contract; and provided, further, that if at any time the Secretary of War deems the security for any advance or advances theretofore made inadequate, the Contractor shall furnish on demand such other security, in the form of a surety bond or surety bonds, as will be satisfactory to the Secretary of War; but at no time shall the Contractor [fol. 1437] be required to maintain in force a surety bond or surety bonds, the total aggregate penal sums of which exceed the aggregate amount of the advances authorized by the Secretary of War under this contract. It is understood that the Government will advance to the Contractor, pursuant to this Article IV-C, the sums currently necessary to the Contractor for working capital, to carry on the work contemplated under Title III hereof, not in excess of 30% of the estimated cost of such work.

2. Whenever there shall be paid to the Contractor, pursuant to section 1 of Article IV-B of this contract reimbursement which, when added to the advance payment or payments made pursuant to section 1 of this Article (IV-C), no additional payment on account of said work shall be made to the Contractor by the Government until said advance payments are expended; provided, however, that if the total cost of the work shall be in excess of the amount so paid to the Contractor including said advance payments, the Government, upon presentation of satisfactory evidence, shall currently and promptly reimburse the Contractor to the extent of such excess cost (subject to any delay in the availability of appropriated funds); provided, further, that if upon termination of the contract for other than the fault of the Contractor, there shall remain due the Government from the Contractor any sum

theretofore advanced by the Government under this contract and not fully liquidated as above provided the same shall be deducted from any payments due the Contractor and any remaining balance of such sums shall be returned to the Government forthwith after final audit by the Government of all accounts heréunder.

3. In the event of cancellation or termination of this Contract because of the fault of the Contractor, the Contractor agrees to return to the Government, upon demand, without set-off of any sum alleged to be due the Contractor, the outstanding balance of any advance payment. Furthermore, if, in the opinion of the Chief of Ordnance, the unliquidated balance of the advance or advances made by the Government under this contract exceeds the amount necessary for the current needs of the Contractor, as determined by the Chief of Ordnance, the amount of such excess shall, upon demand made by the Chief of Ordnance, be promptly returned to the Government and will be credited against the balance due the Government for advances previously made. If the demand made in either event set forth above is not met within fifteen (15) days after the receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six percent (6%) per annum from the date of the demand until payment is made.

4. All funds received as advance payments under this contract, together with all funds received as reimbursements for the cost of the work under Article IV-B of this contract, shall be deposited in a special bank account or accounts separate from the Contractor's general or other funds. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose and shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of this contract, and not for the general business of the Contractor. Balances in such special account or accounts shall at all times secure the repayment of such advances in connection with which these special account or accounts are opened, and the Government shall have a lien upon such balances to secure the

repayment of such advances, which lien shall be superior to any lien of the bank upon such account or accounts by virtue of assignment to it of such contract or otherwise. Provided, however, that any bank in which such funds are deposited shall have no obligation whatever with respect to the use or disposition by the Contractor of funds withdrawn from such account or accounts or be liable for misuse by the Contractor of funds withdrawn prior to the receipt by such bank of notice from the Ordnance Department or the order of a court of competent jurisdiction directing it to refrain from permitting withdrawals by the Contractor. The Contracting Officer shall at all times be afforded proper facilities for inspection and audit of such special bank account or accounts.

5. The Contractor shall not pay to any third party for services in advance nor pay for materials or supplies in advance of delivery at the site of the work or at an approved storage site, any of the sums previously advanced to it by the Government under the provisions of this contract without the prior written approval of the Contracting Officer.

[fol. 1439]

## Title V.

### Provisions Applicable to Entire Contract.

#### Article V-A—Status of Contractor.

It is expressly understood and agreed by the Contractor and the Government that in the performance of the work provided for in this contract, the Contractor is an independent contractor and in no wise an agent of the Government.

#### Article V-B—Termination of Contract by Government.

1. Should the Contractor at any time refuse, neglect, or fail to prosecute the work with promptness and diligence, or default in the performance of any of the agreements herein contained, or should conditions arise which make it advisable or necessary in the interest of the Government to cease work under this contract, the Government may terminate this contract by reasonable notice in writing

from the Contracting Officer to the Contractor. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the Contractor. Upon receipt of such notice the Contractor shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities and supplies in connection with performance of this contract and shall proceed promptly to notify all vendors with whom the Contractor has placed orders to cease work on such orders and notify all Sub-Contractors to terminate work under all Sub-Contracts insofar as such orders of work are chargeable to this contract.

2. If this contract is terminated due to the fault of the Contractor, the Contracting Officer may enter upon the premises and take possession of all manufacturing facilities, materials, work finished or in process, and supplies, title to which has been acquired by the Government under this contract.

3. Upon the termination of this contract as hereinbefore provided, full and complete settlement of all claims of the Contractor arising out of this contract shall be made as follows:

(a) The Government shall assume and become liable for all obligations, commitments and claims that the Contractor may have theretofore in good faith undertaken or incurred in connection with the work under Title III and in accordance with the provisions of said Title; and the Contractor shall as a condition of receiving the payment mentioned in this Article, execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government the rights of the Contractor under such obligations or commitments.

[fol. 1440] (b) The Government shall reimburse the Contractor for all expenditures made in accordance with Title IV, not previously reimbursed, and except as otherwise provided in this contract shall pay to the Contractor all fees and lump-sum payments which have accrued at the date of termination.

(c) If this contract is terminated for the convenience of the Government, the Government shall reimburse the Contractor for such further expenditures after the date of termination for the protection of Government property and for accounting services in connection with the settlement of this contract and other expenses incident thereto as the Contracting Officer may approve.

(d) The obligation of the Government to make any of the payments required by this contract, shall be subject to any unsettled claims for labor or material or any claim the Government may have against the Contractor under this contract.

#### Article V-C—General.

1. The Contracting Officer may require the Contractor to dismiss from the work any employee the Contracting Officer deems incompetent or whose retention is deemed to be not in the Public Interest, subject however to appeal under the provisions of Article V-L for reinstatement of such employee.
2. At all times the Contractor will use all reasonable efforts in all acts hereunder to protect and subserve the interest of the Government.
3. At all times during the progress of the work, the Contractor will keep at its plant a duly appointed and qualified representative who shall receive on the part of the Contractor such notices and other communications as the Contracting Officer may give.
4. The obligations and commitments incurred by the Contractor in accordance with the provisions of the letter of intent from the Government to the Contractor, dated Nov. 13, 1940, and accepted by the Contractor with modifications by letters dated Nov. 18, 1940, and Dec. 2, 1940, are hereby expressly ratified.

#### Article V-D—Records and Accounts—Inspection and Audit.

1. The Contractor agrees to keep records and books of account on a recognized cost-accounting basis, showing

the actual or agreed cost to it of all items of labor, materials, equipment, supplies, services, and other expenditures of whatever nature for which reimbursement is authorized [fol. 1441] under the provisions of this contract. The system of accounting to be employed by the Contractor shall be such as is satisfactory to the Contracting Officer.

2. The Contracting Officer shall at all times be afforded proper facilities for inspection of the work and of the special bank account or accounts provided for in Article IV-C of Title IV, and shall at all times have access to the premises, work and materials, to all books, records, correspondence, instructions, plans, drawings, receipts, vouchers and memoranda of every description of the Contractor pertaining to said work; and the Contractor shall preserve for a period of three (3) years after completion of termination of this contract, all the books, records and other papers herein mentioned, but the Government undertakes and agrees that final audit of the accounts for each calendar year shall be made by the Government not later than six months after the end of each such year.

3. Any duly authorized representative of the Contractor shall be accorded the privilege of examining the books, records and papers of the Contracting Officer relating to the cost of the work for the purpose of checking up and verifying such cost.

#### Article V-E—Preference for Domestic Articles.

1. In the performance of the work covered by this contract the Contractor, sub-contractors, materialmen or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States. The foregoing provision shall not apply to such articles, materials, or supplies of the class or kind to be used or such articles, materials, or supplies from which they are manufactured, as are not mined, produced, or manufactured, as the case may be, in

the United States in sufficient and reasonably [available] commercial quantities and of a satisfactory quality, or to such articles, materials, or supplies as may be excepted by the head of the department under the provisions of Title III, section 3, of the Act of March 3, 1933, 47 Stat. 1520 (US Code, Title 41, section 10b).

2. Inasmuch as the materials listed below or the materials from which they are made are not mined, produced or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of satisfactory qualities, their use in the work herein specified is hereby authorized without regard to the country of origin:

Asbestos	Chromium	Nickel	Silk
Balsa Wood	Cork	Nickel Alloy	Sisal
China Wood Oil	Iridium	(Monel Metal)	Teak Wood
(Tung oil)	Jute	Platinum	Tin
	Kaurigum	Rhodium	
	Lao	Rubber	

[fol. 1442] Articles, materials, or supplies made in the United States and containing mercury, antimony, tungsten or mica of foreign origin may be used (subject to the requirements of applicable specifications) in the work herein specified, if such manufactured articles, materials or supplies have been made in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States.

#### Article V-F—Convict Labor.

The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

#### Article V-G—Workmen's Compensation Law.

The Act of June 25, 1936 (49 Stat. 1938, 1939; 40 USC 290), provides that the several States have authority to make their Workmen's Compensation Laws applicable to contracts for the construction, alteration or repair of a

public building or public work of the United States, and the several States are vested with the power and authority to enforce such State Laws on lands of the United States.

#### Article V-H—Accident Prevention.

The Contractor shall, at all times, exercise reasonable precautions for the safety of employees on the work and shall comply with all applicable provisions of Federal, State, municipal and local safety laws and building and construction codes.

#### Article V-I—Officials Not to Benefit.

No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

#### Article V-J—Approval Required.

This contract shall be subject to the written approval of the Secretary of War and shall not be binding until so approved. The date of such approval shall be considered the date of this contract, anything to the contrary herein, notwithstanding.

#### [fol. 1443] Article V-K—Covenant Against Contingent Fees.

The Contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to terminate the contract, or in its discretion, to deduct from payments due the Contractor the amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commissions payable by Contractor upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

### Article V-L—Disputes.

Except as otherwise specifically provided herein, all disputes concerning questions of fact arising under this contract shall be decided by the Contracting Officer, subject to written appeal by the Contractor within 30 days to the Chief of Branch concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto, when the amount involved is \$15,000 or less. When the amount involved is more than \$15,000, the decision of the Chief of Branch shall be subject to written appeal within 30 days by the Contractor to the Secretary of War or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto. The Contracting Officer, the Chief of Branch, and the Secretary of War shall act with reasonable promptness in such matters. In the meantime, the Contractor shall proceed diligently with the work. Nothing in this Article V-L shall be construed to deprive the Contractor of its legal remedies.

### Article V-M—Contractor's Organization and Methods.

Within a reasonable time after the execution of this contract, the Contractor shall submit to the Contracting Officer a chart showing the executive and administrative personnel to be regularly assigned for full or part-time service in connection with the work under this contract, together with a written statement of the duties of each person and the administrative procedure to be followed by the Contractor for the control and direction of the work; and the data so furnished shall be supplemented as additional pertinent data become available. There shall also be submitted to the Contracting Officer by the Contractor, charts of the various field organizations showing all personnel, other than artisans, mechanics, helpers, and laborers to be assigned for full or part-time service outside of the central-office organization together with a written statement of the duties and rates of pay of each person and the procedure proposed to be followed by the Contractor for the accomplishment of all field work, including temporary requirements; and the data so furnished shall be supplemented as additional pertinent data become available.

Statements of procedure shall include purchasing, disbursing [fol. 1444] ing, accounting, transportation, storage, employment, housing, sanitation, subsistence, recreation, and similar essential activities and methods.

#### Article V-N—Changes.

The Contracting Officer, may at any time, by a written order and without notice to the sureties, make changes in or additions to the drawings and specifications, issue additional instructions, require additional work or direct the omission of work covered by the contract. If such changes cause a material increase or decrease in the amount or character of the work to be done under this contract, or in the time required for its performance, an equitable adjustment of the amount of the fixed-fee or lump-sum to be paid to the Contractor shall be made and the contract shall be modified in writing accordingly. Any claim for adjustment under this Article must be asserted within 30 days from the date the change is ordered: Provided, however, That the Contracting Officer, if he determines that the facts justify such action, may receive and consider, and with the approval of the Chief of Branch, adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in Article V-L hereof. But nothing provided in this Article shall excuse the Contractor from proceeding with the prosecution of the work so changed.

#### Article V-O—Patents and Processes.

The Contractor, during the performance of this contract, shall hold and save the Government, its officers, agents, servants and employees, harmless from liability of any nature or kind, including costs and expenses, for and on account of any invention, article (except materials supplied by the Government), or appliances manufactured or used in the performance of this contract (except appliances [heretofore] used by the Government) upon which letters patent have been issued prior to their manufacture or use in the performance of this contract, including their use by the Government at the Plant; and the Contractor hereby

grants to the Government a perpetual royalty free license to practice in the Plant, but not elsewhere, and then only for purposes of National Defense, all patented inventions, secret processes, technical information and know-how owned by the Contractor which may be incorporated in the design of the Plant by the Contractor. In the event that the Contractor has utilized in its equipping of the Plant, appliances or processes upon which it is obligated to pay royalties to others, the Contractor will endeavor to secure to the Government the right to the use, of such appliances or processes on terms not less favorable to the Government than the terms of their use by the Contractor. This license shall not be assignable to any transferee of the Plant or any part thereof, and the Contractor reserves the privilege of asserting any and all legal rights in and to such patented inventions, secret processes, technical information and know-how against any person, firm or corporation; provided, however, that the provisions of this Article shall [fol. 1445] not supersede or modify any existing agreements between the Contractor and the Government applying to any such inventions, processes, information or know-how.

#### Article V-P—Statutory Provisions.

It is understood that the respective undertakings to conform to the requirements of the several statutes hereinbefore referred to shall be operative only so long as and to the extent that such statutory requirements are applicable hereunder.

#### Article V-Q—Definitions.

[L.] The term "Chief of Branch" refers to the Chief of Ordnance or The Quartermaster General.

2. The terms "The Secretary of War" or "Chief of Branch" shall include their duly authorized representatives as the case may be, other than the Contracting Officer.

3. Except for the original signing of this contract, the term "Contracting Officer" shall include his duly appointed successor or authorized representative.

4. The term "Contracting Officer" as used herein with reference to the services provided for under Title I, and the work called for under Title III with the engineering and construction contractors under Collateral Contracts refers to the Contracting Officer appointed by The Quartermaster General; as used with reference to all other work and services provided herein, it refers to the Contracting Officer appointed by the Chief of Ordnance.

#### Article V-R—Alterations.

The following changes were made in this contract before it was signed by the parties hereto:

##### 1. Page 6a added.

Page 1, Paragraph beginning with "Contract for", 6th line, "all" changed to "certain"; 8th line "design" changed to "layout".

Page 2, Second Whereas clause 7th line, "design" changed to "layout."

Page 4, Paragraph 1, 2nd line, "design" changed to "layout";

Page 7, Paragraph 1, 3rd line, "designing" changed to "layout"; 11th line, "designing" changed to "layout".

Page 9, Paragraph 7, 20th line, insert "as a whole" after "work".

Page 12, Paragraph 1 (g) 8th line, insert "as a whole" after "work".

Page 13, Paragraph i. (i) insert at end of paragraph "and, if approved in writing by the Contracting Officer in advance, royalties on patents, including those owned by the Contractor; and expenses incident to patent searches which may be necessary under the provisions of Article V-O hereof."

Page 14, Paragraph 4, 14th line, insert "as a whole" after "work".

[fol. 1446] In Witness Whereof, The parties hereto have executed this contract in triplicate as of the day and year first above written.

THE UNITED STATES OF AMERICA,

By C. D. HARTMAN,

Brig. Gen., Assistant Quartermaster  
General,

(Contracting Officer).

Approval Recommended:

Dec 9, 1940,

E. B. GREGORY,

Major Gen., The Quartermaster General.

By L. H. CAMPBELL, JR.,

Brig. Gen., U. S. Army,

(Contracting Officer.)

Approval Recommended:

Dec 7, 1940,

C. M. WESSON,

Major Gen., Chief of Ordnance.

WESTERN CARTRIDGE COMPANY, INC.,

By J. M. OLIN, Vice-Pres.,

East Alton, Illinois,

(Business Address:)

Two Witnesses as to  
execution by the Contractor:

SIDNEY G. De KAY,  
New York, New York,  
30 Rockefeller Plaza.  
(Address)

GRACE L. OLSEN,  
New York, New York,  
30 Rockefeller Plaza.  
(Address)

Approved December 14, 1940, by direction of the Secretary of War.

ROBERT P. PATTERSON,

The Assistant Secretary of War.

[fol. 1447] I, Spencer T. Olin, certify that I am the Secretary of the Corporation named as Contractor herein; that J. M. Olin, who signed this contract on behalf of the Contractor was then Vice-President of said Corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Corporate Seal

SPENCER T. OLIN.

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, J. M. Olin, who signed this contract for the Western Cartridge Company, had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

L. H. CAMPBELL, JR.,  
Brig. Gen., U. S. Army.

[fol. 1448]

Schedule A.

Key Personnel for Small Arms  
Ammunition Plant.

Plant Manager

Assistant Plant Manager

Secretary (Legal)

Production Superintendent .30 Cal.

Production Superintendent .50 Cal.

Production Superintendent Tool and Gage

Powder Superintendent

Production Scheduling Supervisor

Comptroller and Staff

Cashier and Paymaster

Cost Accountant and Staff

Time and Rate Supervisor

Purchasing Agent and Staff

Storekeeper—Receiving and Shipping

Personnel Director  
Employment Manager & Staff  
Training School Supervisor

Safety Director & Staff  
Protection Chief  
First Aid Supervisor

Traffic and Freight Supervisor

Chief Engineer  
Plant Engineer—Mechanical  
Plant Engineer—Electrical  
Chief Draftsman—Tool Designers  
Master Mechanic

Technical Director & Staff  
Metallurgist

Chief Inspector & Staff  
Ballistic Engineer

[fol. 1449] General Foremen

Machinist Foremen  
Tool and Gage Foremen  
Principal Foremen for Manufacturing Depts.  
Ballistic Foremen  
Primer Mixing Foremen  
Tracer Mixing Foremen

Adjusters and Tool Setters in sufficient numbers and type  
to train the working force

Head operators and apprentice operators

Matrons—Female Operators

Head—Female Operators

We estimate but do not guarantee that the foregoing  
will comprise about 450 persons. In selecting, training  
and fitting these persons to their duties, it is anticipated  
that the turnover may be 15%.

[fol. 1465] Q. (Mr. McRoberts) Now Mr. Casteel, did the Western Cartridge Company proceed to render the service and do the work described in this contract? A. It did.

Q. And more specifically, acquired the equipment and saw to its installation in the plant? A. That is right.

Q. And that was done pursuant to these terms and provisions and upon the conditions set forth herein?

A. Correct.

Q. Now Mr. Casteel, I believe there were three supplements to that contract executed, were there not?

A. I think that is right, yes, sir.

Mr. Bond: I want to say, Your Honor, in case I should desire to object further to this document that it was just lent to me this morning when court convened and I have not read it.

The Court: If you want to object on some other ground later, the opportunity will be given to you.

Mr. McRoberts: Now, if Your Honor please, I would like to state into the record that there were three supplements to this contract which were entered into, the first under date of June 27, 1941; the second under date of September 10, 1941; and the third under date of January 26, 1942, the general effect of which was merely to extend the scope of the work by reason of an enlargement of the plant. For [fol. 1466] my purpose I do not propose to offer those supplements in evidence, but I have advised Judge Bond that he might have an opportunity to examine them and if there is any part of them he deems material, I will be glad.

Mr. Bond: I will have an opportunity to put it in the record?

Mr. McRoberts: Yes, sir.

Q. (Mr. McRoberts) Now Mr. Casteel, in addition to the work which you did, which the Western Cartridge Company did in the acquisition and installation of the equipment in the plant, did the United States Cartridge Company enter into a contract with the Government for the operation of the plant? A. It did.

Q. I have already shown you the document which has been identified as "Defendant's Exhibit No. 20" and I ask you if that is the contract between the defendant in this case and the Government providing for the operation of the St. Louis Ordnance plant? A. It is.

Q. And did the United States Cartridge Company following the execution of this contract proceed to operate the St. Louis Ordnance plant in accordance with its terms?

A. It did.

Q. And except for certain supplements of this contract to which I will refer later on, was this the only contract [fol. 1467] between the company and the United States Government for the operation of that plant? A. It was.

Q. And were all operations carried on between the United States Cartridge Company at the St. Louis Ordnance plant, carried on pursuant to this contract and its supplements? A. They were.

Q. Or to put that question in a different way, did the United States Cartridge Company do any work at the St. Louis Ordnance Plant for any other branch of the Government or for anyone else in or out of the Government, except this contract, Defendant's Exhibit 20?

Mr. Bond: Object; that is a conclusion on the part of the witness.

Mr. McRoberts: We were not engaging in any other activities, we made no ammunition for anyone else except the ammunition under this contract.

The Court: He may answer subject to the objection.

A. The only business that was carried on there was under the terms of the contract and its supplements. Now the supplements covered some activities that were not mentioned in the contract.

Q. I am going to bring those supplements out. I am merely trying to exclude other branches of the Government. Were there other contracts of the Ordnance Department with any outside interests? [fol. 1468] A. There were not.

Q. Were all products then produced by the United States Cartridge Company at the St. Louis Ordnance Plant dur-

ing this entire period of operation produced in pursuance of contract, Defendant's Exhibit 20 and various supplements thereto?

Mr. Bond: Object as calling for a legal conclusion.

(Last preceding question was read)

Mr. Bond: That is a legal conclusion that everything they did out there was pursuant to contract.

Mr. McRoberts: I am not attempting to ask that particular question.

Q. Did you manufacture any cartridges or any ammunition or any products for anyone other than the United States Government out there? A. No.

Q. And were all of the products manufactured for the United States Government, manufactured under this contract?

Mr. Bond: Objected to as leading.

The Court: Overruled.

Q. This contract and its supplements? A. They were.

Q. Now Mr. Casteel this contract appears to cover ammunition, and I don't know whether it is defined in here. What kind of ammunition is it that you manufactured out there? I am not referring to quality.

[fol. 1469] A. Thirty calibre and fifty calibre small arms ammunition is various types of ball and armor-piercing.

Q. Was it all military? A. All military.

Q. You manufactured no sporting or commercial ammunition such as the American Cartridge Company manufactures in its ordinary activities? A. None whatsoever.

Mr. McRoberts: I offer in evidence Defendant's Exhibit No. 20; and I call the Court's particular attention to these parts of the contract. It is dated December 5, 1940. It recites:

"Whereas, the Government contemplates entering into contracts, hereinafter referred to as Collateral Contracts, with other parties for construction, including designing, engineering and installation and manu-

facture of the facilities incident thereto of a plant hereinafter described in Title One.

"And, whereas, the Government contemplates entering into a contract of even date herewith, with the Western Cartridge Company." That is the other contract, Defendant's Exhibit 20:

"And, whereas, the Government desires to have the contractor as an independent contractor on a cost-plus basis to make all necessary preparations for the operation of the plant and so forth.

[fol. 1470] "Now, therefore, it is agreed as follows:

Mr. Bond: What page?

Mr. McRoberts: The plant is described. And over on page 5 there is a statement of the work which the contractor is to do which in substance was, the contractor shall perform all organization service and as each operating line of the plant is completed the contractor shall proceed to operate it for the manufacture of ammunition, and when all operating lines of the plant have been completed and ready for operation, the contractor shall operate the plant until the quantities set forth herein have been manufactured, and that the contractor agrees to manufacture subject to the terms and conditions hereof quantities of ammunition. And then are set forth various many numbers of rounds of different kinds and classes of military ammunition that was to be made at that plant. The contract provides that the Government shall furnish all smokeless powder required for the foregoing ammunition. The contract further provides that the armor piercing core shall not be manufactured at this plant by this contractor but shall be furnished by the Government. Furnished by McQnay-Norris in its operation of the one portion of the plant. The contract provides on page 7:

"It is the understanding of the parties hereto and the intention of this contract that all work, including the handling of funds under this Title One is to be [fol. 1471] performed at the expense and risk of the Government, and that the Government shall indemnify and hold the contractor harmless against any loss, expense, damage or liability of any kind whatsoever

arising out of or in connection with the performance of the work under this Title One, except of course in the event that such loss, expense, damage or liability is due to the personal failure on the part of the corporate officers of the contractor or other representatives of the contractor having supervision and direction of the operation of the plant as a whole to exercise good faith or that degree of care which is normally exercised in the conduct of the contractor's business.

Then it provides that the contractor shall be paid a fixed fee per thousand cartridges, varying from time to time, produced at the plant. It provides that the Government shall bear all costs and expense of every character and description incurred by the contractor under this contract when approved in advance or subsequently and subsequently ratified by the Contracting Officer, which costs and expenses shall include but shall not be limited to the following items: And then there is a detail of various elements of cost.

There is a provision in the contract for advancing—it is rather lengthy, but it provides for the Government from time to time to advance to the contractor the funds with which to purchase material and meet pay rolls and operate [fol. 1472] the plant, which fund shall be held and accounted for in accordance with the special restrictions and limitations set forth herein. Such restrictions, for example, being this:

"All funds received as advance payments under this contract together with all funds received as reimbursement for the cost of work under Article 2b of this contract, shall be deposited in a special bank account or accounts separate from the contractor's general or other funds, and shall be especially designated and shall be used only for the purpose set forth herein. The Government reserves the right to terminate the contract at any time when it deems it to the best interest of the Government to do so. The extent and character of the work to be done by the contractor under this contract shall be subject to approval of the Contracting Officer."

And then this provision, page 21:

"The title to all work, under this contract, completed or in the course of construction or manufacture, and to all the ammunition manufactured or in process of being manufactured, shall be in the Government. Likewise, upon delivery at the site of the work or at an approved storage site, title to all purchased materials, tools, machinery, equipment and supplies for which the contractor shall be entitled to be reimbursed under Title Two hereof, shall vest in the Government. The Government shall bear all [fol. 1473] risk incident to such ownership."

In other words, the contractor carries no insurance.

"This provision as to title being vested in the Government shall not operate, however, to relieve the contractor from any duties imposed upon it under the terms of this contract. The Government reserves the right to furnish not only smokeless powder, but any other materials that might be required."

It is provided that any dispute shall be settled by the Government; that the contractor's organizations and methods under which it proposes to carry out the contract should be submitted to the Government and approved by the Government. That the Government reserves the right to make changes from time to time, and other provisions which may be material.

I offer in evidence "Defendant's Exhibit No. 20."

Mr. Bond: Your Honor, please, I desire to make the same objections to the reception in evidence of this contract as I made to the offer of the contract with the Western Cartridge Company, which I believe has been marked Exhibit 22. And to amplify those objections and calling the Court's attention to the fact I object to it on the same grounds as I did on Exhibit 22, I desire to further point out that the Fair Labor Standards Act does not exclude from its operation goods produced for the Government, nor for materials made, nor when made from [fol. 1474] materials the title to which may be in the Government.

The Court: It will be received subject to the objection;

[fol. 1475] Defendant's Exhibit 20.

## Original Contract in Treasurers Files.

Copy to J. M. Olin 1/16/41

" " B. E. Bassett

" " Booz, Frye, Allen &amp; Hamilton

Contract No. W-ORD-491

Cost-Plus-A-Fixed-Fee Operation Contract  
War DepartmentContractor: United States Cartridge Company, Baltimore,  
MarylandFixed Fee for Operation: \$ 2.00 per thousand cartridges,  
Bal. Cal. .30, M2;\$ 3.60 per thousand cartridges,  
A. P., Cal. .30, M2;\$ 3.00 per thousand cartridges,  
Tracer, Cal. .30, M1;\$11.00 per thousand cartridges,  
A. P., Cal. .50, M1;\$10.00 per thousand cartridges,  
Tracer, Cal. .50, M1;Contract for: Operation of a plant for the manufacture of  
Caliber .30 and Caliber .50 Small Arms Ammunition of all types.

Place: St. Louis, Missouri.

Estimated Cost of Operating the Plant: \$87,279,790.00

Payments to be made by the Finance Officer, U. S. Army, at:  
St. Louis, Missouri

(Seal)

The supplies and services to be obtained by this instrument are authorized by, are for the pur-

poses set forth in, and are chargeable to the following Procurement Authorities, the available balances of which are sufficient to cover the cost of the same.

ORD 8026 P11-0270 A 1005-01

L. H. CAMPBELL, JR.,  
Brig. Gen., U. S. Army

This contract is authorized by the following laws:

Act of July 2, 1940 (Public No. 703, 66th Cong.)

[fol. 1476] Cost-Plus-A-Fixed-Fee Operation  
Contract.

This Contract, entered into this 5th day of December, 1940, by the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this contract; and The United States Cartridge Company, Baltimore, Maryland, a corporation organized and existing under the laws of the State of Maryland, with its principal office in Baltimore, Maryland, hereinafter called the Contractor, witnesseth that:

Whereas, The Government contemplates entering into contracts (hereinafter referred to as the "Collateral Contracts") with other parties for the construction, including the design and engineering, and installation of manufacturing facilities incident thereto, of a plant hereinafter described in Title I; and

Whereas, The Government contemplates entering into a contract of even date herewith with the Western Cartridge Company, East Alton, Illinois, (hereinafter referred to as "Western") for management service covering supervision, direction and control of the production aspects of the layout, engineering and construction (including plant and equipment layouts) of said plant; for training of key personnel; and for procurement, supervision of layout, and supervision of installation (including supervision of plans therefor) of manufacturing facilities; and

Whereas, The Contractor is a wholly-owned subsidiary of Western; and

Whereas, Western proposes to execute a performance bond running to the Government substantially similar to United States Standard Form No. 25 (Revised) in an unlimited amount to secure the performance by the Contractor of all the undertakings, covenants, terms, conditions, and agreements of this contract; and

Whereas, The Government desires to have the Contractor, as an independent contractor on a cost-plus-a-fixed-fee basis, make all necessary preparations for the operation of said plant, including the training of operating personnel (other than the key personnel required to be trained by Western under the terms of its contract with the Government previously referred to), but excluding the procurement and supervision of the installation of manufacturing facilities; and operate said plant; and

Whereas, the accomplishment of the above-described work under a cost-plus-a-fixed-fee contract entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

[fol. 1477] • Whereas, as a result of such negotiations, the Secretary of War has directed that the Government enter into such a contract with the Contractor for the accomplishment of the above-described work;

Now, Therefore, the parties hereto do mutually agree as follows:

[fol. 1478]

Title I.

Operation.

Article I-A—Description of Plant.

The small arms ammunition plant (hereinafter referred to as "the Plant") to be provided under the Collateral Contracts and under the contract between the Government and Western of even date herewith shall comprise a plant

located at one or more places at or near St. Louis, Missouri, for the manufacture of Caliber .30 and Caliber .50 Ammunition of certain types as specified in Article I-B (hereinafter sometimes referred to as the "Ammunition"), having a daily capacity as follows:

2,000,000 rounds packed and ready for shipment of Caliber .30 Ammunition, of which sixty-five percent (65%) is to be Ball, twenty percent (20%) Armor Piercing, and fifteen percent (15%) Tracer Cartridges;

1,200,000 rounds packed and ready for shipment of Caliber .50 Ammunition, of which eighty percent (80%) is to be Armor Piercing and twenty percent (20%) Tracer Cartridges.

Said Plant shall include parts manufacturing and loading buildings, powder storage area separate from manufacturing and loading units and removed from populous area, administration buildings, training school, magazines, shops, railroads (including connections, sidings and industrial railroads), roads, curbs, sidewalks, planting, sewers, steam lines, air lines, electric lines, telephone lines, fencing, lighting, power house, water system, staff dwellings, cafeterias, guard-quarters, fire fighting and housing thereof, and other buildings necessary or appropriate for a plant of the approximate capacity aforesaid, with storage buildings in connection with the manufacturing and loading units adequate for about one (1) day's supply of incoming powder and twenty (20) days' supply of other materials and about two (2) days' production of finished product. There shall be included a testing range at least 2000 yards in length with adequate safety width and length, or arrangements made for such testing elsewhere, with all necessary buildings, instruments, and equipment for testing. The powder storage area shall be of such capacity as to provide about thirty (30) days' storage of powder and about thirty (30) days' storage of finished Ammunition. The said Plant shall conform, insofar as is practicable, with the designs, drawings, specifications, details, standards and safety practices which are on file in the offices of The Quartermaster General or Chief of Ordnance.

## [fol. 1479] Article I-B—Statement of Work.

1. The Contractor shall perform all organization service in connection with the planning of and the making of all necessary preparations for the operation of the Plant, including the training of operating personnel (other than the key personnel required to be trained by Western under the terms of its contract with the Government of even date herewith), in the Plant when available, or at a school to be set up under the Collateral Contracts and said Western contract, but excluding the procurement and supervision of installation of manufacturing facilities; and all other services incident to setting up an efficient and going operating force.

2. As each operating line of the Plant is completed under the Collateral Contracts and the contract with Western previously referred to, and is ready for operation, the Contractor shall proceed to operate it for the manufacture of Ammunition. When all operating lines of said Plant shall have been completed and ready for operation (irrespective of whether or not the construction and equipment of the remainder of said Plant shall have been completed) the Contractor shall so notify the Contracting Officer in writing, and the Contractor shall operate said Plant until the quantities of Ammunition listed in Section 3 of this Article I-B shall have been manufactured.

3. The Contractor agrees to manufacture, subject to the terms and conditions hereof, the following quantities of Ammunition:

(a) 150,000,000 rounds, packed and ready for shipment, Cartridges, Ball, Cal. .30 M2, as per Drawing Number B-137544, dated September 20, 1940, and drawings and specifications as listed thereon, of which a minimum of fifty per cent (50%) shall be of Aircraft Grade.

(b) 150,000,000 rounds, packed and ready for shipment, Cartridges, Armor Piercing, Cal. .30 M2, as per Drawing Number B-138194, dated September 20, 1940, and drawings and specifications as listed thereon, of which a minimum of seventy-five per cent (75%) shall be of Aircraft Grade.

(c) 100,000,000 rounds, packed and ready for shipment, Cartridges, Tracer, Cal. .30 M1, as per Drawing Number

B-6764, dated September 20, 1940, and drawings and specifications as listed thereon, of which a minimum of sixty per cent (60%) shall be of Aircraft Grade.

(d) 280,000,000 rounds, packed and ready for shipment, Cartridges, Armor Piercing, Cal. .50 M2, as per Drawing Number C-69930, dated September 20, 1940, and drawings and specifications as listed thereon, of which a minimum of eighty-seven per cent (87%) shall be of Aircraft Grade.

[fol. 1480] (e) 53,000,000 rounds, packed and ready for shipment, Cartridges, Tracer, Cal. .50 M1, as per Drawing Number C-44843, dated September 20, 1940, and drawings and specifications as listed thereon, of which a minimum of eighty per cent (80%) shall be of Aircraft Grade.

While the Contractor shall make every reasonable effort to manufacture Ammunition conforming to the specifications referred to herein it is recognized that variances therefrom are unavoidable and the Contractor shall, if possible, at the direction of the Contracting Officer, re-work rejected Ammunition and shall not be responsible for Ammunition finally rejected.

The Government shall deliver to the Contractor at the time of execution of this contract copies of the above Drawing Numbers, B-137544, B-138194, B-6764, C-69930, and C-44843, all dated September 20, 1940, and drawings and specifications listed thereon, which will be identified by the signatures of the parties appearing on the copies of such Drawing Numbers in the office of the Chief of Ordnance.

4. Upon written notice to the Contractor not less than ninety (90) days before the completion of the manufacture of the total quantity of any type of Ammunition specified herein, the Government may place additional orders for any quantity of such type of Ammunition upon terms which shall be mutually agreed upon after negotiation by the parties to this agreement.

5. The Government shall furnish all smokeless powder required for the foregoing Ammunition, when and as requisitioned from time to time by the Contractor, and which will be delivered from time to time, f. o. b. said Plant, in

sufficient quantities and of a satisfactory quality to enable the Contractor to carry out the delivery schedule for loaded Ammunition established from time to time by the Contractor with the approval of the Contracting Officer; Provided, however, that if at any time during the period of operation under this Title I, the smokeless powder manufactured by Western shall be approved by the Government for use in the manufacture of Ammunition under Government specifications, the Government may require the Contractor to furnish such powder manufactured by Western as may be required for the purposes of this contract, under terms and conditions to be mutually agreed upon after negotiations between the parties hereto. The Contractor shall be under no obligation to accept or to store or permit to be stored at said Plant any explosives which in the opinion of the Contractor would render the work to be done by the Contractor herewith or the operations at said Plant hazardous beyond what is usual in the normal operation of an ammunition plant of the type provided for herein.

[fol. 1481] 6. It is understood and agreed that in the manufacture of Ammunition provided for in this Title I, the Contractor will not manufacture at the Plant the Armor Piercing Cores necessary for the Ammunition provided for in items (b) and (d) of Section 3 of this Article I-B. Such Cores shall be procured by the Contractor from commercial sources. Provided, however, that if the Contractor encounters difficulty in procuring such cores, it will apply to the Chief of Ordnance for assistance.

7. The Government reserves the right to furnish any materials necessary for the operation of the Plant, upon so notifying the Contractor prior to any commitment by the latter therefor. In the operation of the Plant the Contractor shall be free (but shall not be obligated) to use any materials of its own or Western's manufacture, upon advising the Government in advance as to the prices at which and the conditions upon which such materials will be supplied. In the event the Government is able to obtain material of equal quality and quantity at a lower price or on more favorable conditions from any responsible competitive source or from its own manufacture, it may undertake to do so upon so informing the Contractor within ten (10)

days after being advised of the Contractor's or Western's price for such material, the Contractor or Western first having the right to meet such lower price or more favorable conditions.

8. The Contractor shall be under no obligation to operate said Plant or any part thereof, under this Title I if in its opinion such operation would be hazardous beyond what is usual in the normal operation of an ammunition plant of the type provided for herein, due to the manner in which the same has been constructed and equipped by the Construction Contractor under the Collateral Contracts.

9. It is the understanding of the parties hereto, and the intention of this contract, that all work, including the handling of funds, under this Title I is to be performed at the expense and risk of the Government and that the Government shall indemnify and hold the Contractor harmless against any loss, expense, damage or liability of any kind whatsoever arising out of or in connection with the performance of the work under this Title I, except to the extent that such loss, expense, damage or liability is due to the personal failure on the part of the corporate officers of the Contractor or of other representatives of the Contractor having supervision and direction of the operation of the Plant as a whole, to exercise good faith or that degree of care which they normally exercise in the conduct of the Contractor's business.

[fol. 1482]- Article 1C—Estimates.

It is estimated that the total cost of the Contractor's performance under Title I of this contract will be approximately Eighty Seven Million Two Hundred Seventy Nine Thousand Seven Hundred Ninety Dollars (\$87,279,790.00), exclusive of the Contractor's fee, and that the total quantity of Ammunition to be manufactured under this Title I will have been delivered to the Government within twenty-five (25) months from the signing of this contract. It is expressly understood, however, that the Contractor does not guarantee the correctness of these estimates. The estimates set forth above are based upon the estimates agreed to by both the Government and the Contractor.

copies of which are on file in the office of the Chief of Ordnance.

#### Article I-D—Consideration.

In consideration for its undertaking under this Title I the Contractor shall receive the following which shall constitute complete compensation for the Contractor's services under this Title I, including profit:

1. Reimbursement for expenditures as provided in Title II.
2. Fixed-fees as listed below for operation of the Plant which fees shall constitute complete compensation for the Contractor's services under this Title I, including profit.
  - (a) Two Dollars (\$2.00) fixed-fee per 1000 rounds packed and ready for shipment for the cartridges, Ball, Cal. .30 M2, and
  - (b) Three Dollars and Sixty Cents (\$3.60) fixed fee per 1000 rounds packed and ready for shipment for the Cartridges, Armor Piercing, Cal. .30 M2; and
  - (c) Three Dollars (\$3.00) fixed-fee per 1000 rounds packed and ready for shipment for the Cartridges, Tracer, Cal. .30 M1; and
  - (d) Eleven Dollars (\$11.00) fixed-fee per 1000 rounds packed and ready for shipment for the Cartridges, Armor Piercing, Cal. .50 M2; and
  - (e) Ten Dollars (\$10.00) fixed-fee per 1000 rounds packed and ready for shipment for the Cartridges, Tracer, Cal. .50 M1.
3. The above fees shall apply on all cartridges used by the Government in its independent testing in connection with lots accepted by the Government.

#### [fol. 1483] Article I-E—Authority of the Contractor.

In carrying out the work under this Title I the Contractor is authorized to do all things necessary or con-

venient in and about the operating and closing down of the Plant, or any part thereof, including (but not limited to) the employment of all persons engaged in the work hereunder, (who shall be subject to the control and constitute employees of the Contractor), the providing of all materials except such materials as the Government is to furnish or supply, as elsewhere specifically provided herein the storage of raw materials and supplies and of finished Ammunition to the extent of the storage facilities at said Plant, and the loading of Ammunition on cars or other carriers in accordance with the Government's shipping instructions.

#### Article I-F—Contractor's Inspection System.

The Contractor shall maintain a satisfactory system of inspection, gaging and gage checking concurrent with manufacture, and no ordnance material shall be submitted for the Government inspector's approval which has not previously been inspected by agents of the Contractor and found to be up to the contract standard.

[fol. 1484]

#### Title II.

##### Cost of the Work and Payment Therefor.

#### Article II-A—Reimbursement for Contractor's Expenditures.

1. The Government shall bear all costs and expenses of every character and description incurred by the Contractor under this contract, when approved in advance or subsequently ratified by the Contracting Officer, which costs and expenses shall include but shall not be limited to the following items, to wit:

(a) All labor (including guards and fire protection forces), materials, tools, machinery, equipment, designs, plans, supplies, services, power and fuel necessary for either temporary or permanent use for the benefit of the work under this contract.

(b) All subcontracts made in accordance with the provisions of Title I.

- (c) Transportation charges on materials, supplies and equipment, including loading and unloading, necessary storage, and transportation charges prepaid by the Contractor on outgoing shipments.
- (d) Expenses of procuring labor and expediting the production and transportation of material and equipment.
- (e) Salaries of resident engineers, superintendents, time-keepers, accountants, foremen and all other employees of the Contractor in connection with the work. In case the full time of any employee of the Contractor is not applied to the work, his salary shall be included in this item only in proportion to the actual time applied thereto. It is recognized that in transferring men from their regular positions to the Plant, it may be necessary to make some increase in their remuneration, which shall be subject to the approval of the Contracting Officer.
- (f) Premiums on such bonds as may be required under Section 4 of Article III-F and under the provisions of Article II-C and such insurance policies as may be required under this contract; the cost of all public liability, employer's liability, workmen's compensation, fidelity, fire, theft, burglary and other insurance that the Contracting Officer may approve as reasonably necessary for the protection of the Contractor.
- (g) Losses and expenses, not compensated by insurance or otherwise (including settlements of claims between the Contractor and third parties, made with the written consent of the Contracting Officer), actually sustained by the Contractor in connection with the work and found and certified by the Contracting Officer as not being due to the personal failure on the part of the corporate officers of [fol. 1485] the Contractor or of other representatives of the Contractor having supervision and direction of the operation of the Plant as a whole, to exercise good faith or that degree of care which they normally exercise in the conduct of the Contractor's business.
- (h) The cost of reconstructing and replacing any of the work destroyed or damaged, and not compensated by insurance, but expenditures under this item must have the

written authorization of the Contracting Officer in advance. Such reconstruction or replacing shall be considered as additional work under the provisions of Article III-Q.

(i) Payments made by the Contractor under the Federal Social Security Act (employer's contributions), and any applicable state or local taxes, permits, license fees, or other charges which the Contractor may be required to pay on account of or in connection with the work under this contract; and, if approved in writing by the Contracting Officer in advance, royalties on patents, including those owned by the Contractor; and expenses incident to patent searches which may be necessary under the provisions of Article III-R hereof.

(j) Such portion of the transportation, traveling and hotel expense of engineers and other employees of the Contractor as is actually incurred in connection with this work; and, when approved in advance in writing by the Contracting Officer in specific cases, all costs and expenses reimbursed to employees transferred to or from the Plant on account of transportation and living expenses of themselves and their families, losses due to sale of homes at less than the appraisal value as fixed by the Contractor in handling similar matters concerning its employees, unexpired leases; and living expenses while obtaining new residences. It is agreed that all allowances of cost under this item shall conform to and not exceed the ordinary allowances authorized by the Contractor for its employees in the normal conduct of its business.

(k) General administrative and other general expenses of the Contractor (other than expenses which are directly attributable to the work hereunder and are covered by other paragraphs of this Section 1 of Article II-A) deemed for the purpose of this contract to be incident to the operation of the Plant under this contract in the amount of Sixty Thousand Six Hundred Fifteen Dollars (\$60,615.00) per month throughout the period required for production of the Ammunition listed in Section 3 of Article I-B of Title I, but such monthly payments shall not exceed twenty (20) in number. The first of such payments shall be made at the close of the first calendar month during which any

completed Ammunition is manufactured by the Contractor in the Plant. Should the period required for production of Ammunition under the terms of this agreement extend beyond the due date of the twentieth payment hereunder, the [fol. 1486] amount of the monthly payment provided in this paragraph (k) shall be renegotiated by the parties hereto.

(l) While the Contractor shall make every reasonable effort to manufacture Ammunition conforming to the specifications referred to in Article I-B, hereof, it is recognized that variances therefrom are unavoidable and the Contractor shall be allowed all costs determined in accordance with this Article II-A for Ammunition reworked because of rejection and for Ammunition finally rejected.

(m) Extra compensation to employees, any discontinuance wages, charges under and a proportionate share of the cost of welfare and other employee relations plans maintained by the Contractor to the extent that such plans are made applicable to its employees at said Plant. In the payment of extra compensation and in the making of expenditures pursuant to or in the maintenance of welfare or other plans for the benefit of employees at said Plant, the Government shall be chargeable therefor, when expressly authorized in writing by the Contracting Officer, insofar as the same are consistent with the Contractor's general employee relations policies throughout its organization, or are incurred pursuant to agreement made as a result of collective bargaining with representatives of employees, it being intended that the employees at said Plant shall be treated no less favorably than employees at other plants in the Contractor's organization.

(n) Accounting (including salaries and other expenses) in connection with special audits of accounts for the Government in connection with the work hereunder.

(o) Expenses in connection with any temporary or permanent closing down of the Plant.

(p) All costs and expenses of every kind and description incurred in the operation of the hospital, cafeteria, or any other facilities operated by the Contractor in connection with the work.

(q) It is recognized by the parties hereto that most of the operating personnel (other than the key personnel required to be trained by Western under its contract with the Government of even date herewith) of the Plant will have to be trained to some extent, at a school for this purpose to be set up at or near the site of the Plant or in the Plant. For the expenses of training personnel at the school referred to herein or at the Plant the Contractor shall be reimbursed in accordance with the provisions of this Section 1 of Article II-A.

(r) Such other items as should, in the opinion of the Contracting Officer, be included in the cost of the work. When such an item is allowed by the Contracting Officer, it shall be specifically certified as being allowed under this paragraph.

[fol. 1487] 2. The Government reserves the right to pay directly to persons concerned all sums due from the Contractor for labor, materials, or other charges.

3. No salaries of the Contractor's executive officers, no part of the expense incurred in conducting any main office which the Contractor may have elsewhere than at the Plant, no part of the expense incurred in conducting the Contractor's regularly established branch offices, and no overhead expenses of any kind, except as specifically authorized in Section 1 of this Article II-A shall be included in the cost of the work; nor shall any interest on capital employed or on borrowed money be included in the cost of the work.

4. The Contractor shall, to the extent of its ability, take all cash and trade discounts, rebates, allowances, credits, salvage, commissions and direct bonifications, and when unable to take advantage of such benefits, it shall promptly notify the Contracting Officer to that effect and the reason therefor. In determining the actual net cost of articles and materials of every kind required for the purpose of this contract, there shall be deducted from the gross cost thereof all cash and trade discounts, rebates, allowances, credits, salvage, commissions and direct bonifications which have accrued to the benefit of the Contractor. Any

such benefits lost shall be deducted from gross costs to the extent that their loss is due to the personal failure on the part of the corporate officers of the Contractor or of other representatives of the Contractor having supervision and direction of the operation of the Plant as a whole; to exercise good faith or that degree of care which they normally exercise in the conduct of the Contractor's business. Any such benefits lost through the fault of the Government or lost through compliance with the provisions of Section 5 of Article II-C shall not be deducted from gross costs.

5. All revenue from the operations of the hospitals, cafeteria, and all other facilities; or from rebates, discounts, refunds, and the like, shall be accounted for by the Contractor and applied in reduction of the cost of the work under this Title II.

#### Article II-B—Payments.

##### 1. Reimbursement for Cost.

(a) All payments hereunder shall be subject to the provisions of Section 2 of Article II-C.

(b) The Government shall currently reimburse the Contractor for expenditures made in accordance with Article II-A of this Title II upon certification to and verification by the Contracting Officer of the original certified payrolls for labor, or the original paid invoices for materials, or other original papers, or other evidence satisfactory to the Contracting Officer. Except as otherwise provided [fol. 1488] in Section 1 of Article II A, reimbursement will be made weekly but may be made at more frequent intervals if the conditions so warrant.

##### 2. Payment of the Fixed-Fee.

The fixed-fee provided for in Title I shall be paid monthly as it accrues, dependent upon the quantities and types of Ammunition produced and accepted. If the Contract is terminated due to the fault of the Contractor, no additional payment on account of the fixed-fee will be made.

### 3. Payments by Contractor.

If any bills for the purchase of material, machinery or equipment, or payrolls covering employment of laborers or mechanics, incurred by the Contractor or by the Sub-Contractor hereunder are not promptly paid by the Contractor or Sub-Contractor as the case may be, and should the Contractor neglect or refuse to pay such bills, or payrolls or to direct any Sub-Contractor to pay such bills or payrolls within five (5) days after notice from the Contracting Officer so to do, the Government shall have the right, provided the same are not disputed in good faith by the Contractor or Subcontractor, to pay such bills or payrolls directly.

### 4. Failure of Government to Make Payments.

In the event of failure of the Government to make any payments or advances as provided in this Title II (other than by reason of normal delay in the payment of current expenditures incident to the checking by the disbursing officer of statements of such expenditures), the Contractor may suspend its performance hereunder until the full amount of any deficiency shall have been paid. The exercise of this right shall be without prejudice to any other rights or remedies of the Contractor on account of such failure by the Government; and failure of the contractor to exercise such right shall not constitute a waiver thereof with respect to any continuing or subsequent failure on the part of the Government.

## Article II-C—Advances.

1. At any time, and from time to time, after the execution of this Contract, the Government, at the request of the Contractor, and subject to the approval of the Chief of Ordnance as to the necessity therefor, shall advance to the contractor without payment of interest thereon by the Contractor, a sum not in excess of thirty percent (30%) of the estimated cost of the work under this contract (as increased or decreased pursuant to the provisions of Article III-Q of Title III). When approximately sixty (60) per cent of said estimated cost (as increased or decreased

pursuant to the provisions of Article III-Q of Title III) shall have been paid under Section 1 of Article II-B, a revised estimate of such costs shall be made by the Contractor; and if it appears that the then estimated [fol. 1489] cost exceeds the amount of the original estimate (increased or decreased as provided above), and the revised estimate is approved by the Chief of Ordnance, the Government shall under the conditions stated above advance to the Contractor without interest, not to exceed thirty per cent (30%) of such excess. Such advance or advances shall be made in each case upon the furnishing, of such surety bonds in such penal sums not exceeding the total aggregate adyance as the Secretary of War may prescribe; provided that the Secretary of War shall have prescribed the furnishing of a surety bond in connection with such advances as security additional to that provided for in this contract; and provided, further, that if at any time the Seeretary of War deems the security for any advance or advances theretofore made inadequate, the Contractor shall furnish on demand such other security, in the form of a surety bond or surety bonds, as will be satisfactory to the Secretary of War; but at no time shall the contractor be required to maintain in force a surety bond or surety bonds, the total aggregate penal sums of which exceed the aggregate amount of the advances authorized by the Secretary of War under this contract. It is understood that the government will advance to the Contractor, pursuant to this Article II-C, the sums currently necessary to the Contractor, for working capital, to carry on the work contemplated under this contract, not in excess of 30% of the estimated cost of such work.

2. Whenever there shall be paid to the Contractor, pursuant to section 1 of Article II-B of this contract reimbursement which, when added to the advance payment or payments made pursuant to Section 1 of this Article II-C, shall equal the full amount of the estimated cost of said work under this contract (as increased or decreased pursuant to the provisions of Section 1 of this Article II-C), no additional payment on account of said work shall be made to the Contractor by the Government until said advance payments are expended; provided, however, that if the

total cost of the work shall be in excess of the amount so paid to the contractor including said advance payments, the Government upon presentation of satisfactory evidence, shall currently and promptly reimburse the Contractor to the extent of such excess cost (subject to any delay in the availability of appropriated funds); provided, further, that if upon termination of the contract for other than the fault of the Contractor there shall remain due the Government from the Contractor any sum theretofore advanced by the Government under this contract and not fully liquidated as above provided the same shall be deducted from any payments due the Contractor and any remaining balance of such sums shall be returned to the Government forthwith after final audit by the Government of all accounts hereunder.

3. In the event of cancellation or termination of this Contract because of the fault of the Contractor, the Contractor agrees to return to the Government, upon demand, without set-off of any sum alleged to be due the Contractor, the outstanding balance of any advance payment. Furthermore, if, in the opinion of the Chief of Ordnance the unliquidated balance of the advance or advances made [fol. 1490] by the Government under this contract exceeds the amount necessary for the current needs of the Contractor, as determined by the Chief of Ordnance, the amount of such excess shall, upon demand made by the Chief of Ordnance, be promptly returned to the Government and will be credited against the balance due the Government for advances previously made. If the demand made in either event set forth above is not met within fifteen (15) days after the receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six per cent (6%) per annum from the date of the demand until payment is made.

4. All funds received as advance payments under this contract together with all funds received as reimbursements for the cost of the work under Article II-B of this contract, shall be deposited in a special bank account or accounts separate from the Contractor's general or other funds. Such special bank account or accounts shall be so

designated as to indicate clearly to the bank their special character and purpose and shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of this contract, and not for the general business of the Contractor. Balance in such special account or accounts shall at all times secure the repayment of such advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances, which lien shall be superior to any lien of the bank upon such account or accounts by virtue of assignment to it of such contract or otherwise. Provided, however, that any bank in which such funds are deposited shall have no obligation whatever with respect to the use or disposition by the Contractor of funds withdrawn from such account or accounts or be liable for misuse by the Contractor of funds withdrawn prior to the receipt by such bank of notice from the Ordnance Department or the order of a court of competent jurisdiction directing it to refrain from permitting withdrawals by the Contractor. The Contracting Officer shall at all times be afforded proper facilities for inspection and audit of such special bank account or accounts.

5. The Contractor shall not pay to any third party for services in advance nor pay for materials or supplies in advance of delivery at the site of the work or at an approved storage site, any of the sums previously advanced to it by the Government under the provisions of this contract without the prior written approval of the Contracting Officer.

[fol. 1491]

### Title III.

#### General Provisions.

##### Article III-A—Status of Contractor.

It is expressly understood and agreed by the Contractor and the Government that in the performance of the work provided for in this contract, the Contractor is an independent contractor and in no wise an agent of the Government.

### Article III-B—Termination of Contract by Government.

1. Should the Contractor at any time refuse, neglect, or fail to prosecute the work with promptness and diligence, or default in the performance of any of the agreements herein contained, or should conditions arise which make it advisable or necessary in the interest of the Government to cease work under this contract, the Government may terminate this contract by reasonable notice in writing from the Contracting Officer to the Contractor. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the Contractor. Upon receipt of such notice the Contractor shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities and supplies in connection with performance of this contract and shall proceed promptly to notify all vendors with whom the Contractor has placed orders to cease work on such orders and notify all Sub-Contractors to terminate work under all Sub-Contracts insofar as such orders or work are chargeable to this contract; Provided however, that if termination is based on the advisability or necessity of ceasing work under this contract in the interest of the Government, the termination notice shall specify that the Contractor be permitted to operate the Plant for one hundred and sixty (160) working hours (which is estimated as the time necessary for the completion of Ammunition in process of manufacture) after the delivery of such notice to the Contractor.

2. If this contract is terminated due to the fault of the Contractor, the Contracting Officer may enter upon the premises and take possession of the Plant and all manufacturing facilities, materials, work finished or in process, and supplies, title to which has been acquired by the Government under this contract.

3. Upon the termination of this contract as hereinbefore provided, full and complete settlement of all claims of the Contractor arising out of this contract shall be made as follows:

[fol. 1492] (a) The Government shall assume and become liable for all obligations, commitments and claims that the Contractor may have theretofore in good faith undertaken or incurred in connection with said work and in accordance with the provisions of this contract; and the Contractor shall as a condition of receiving the payment mentioned in this Article, execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government the rights of the Contractor under such obligations or commitments.

(b) The Government shall reimburse the Contractor for all expenditures made in accordance with Title II, not previously reimbursed, and except as otherwise provided in this contract shall pay to the Contractor all fees and lump-sum payments which have accrued at the date of termination.

(c) If this contract is terminated for the convenience of the Government, the Government shall reimburse the Contractor for such further expenditures after the date of termination for the protection of Government property and for accounting services in connection with the settlement of this contract and other expenses incident thereto as the Contracting Officer may approve.

(d) The obligation of the Government to make any of the payments required by this contract, shall be subject to any unsettled claims for labor or material or any claim the Government may have against the Contractor under this contract.

#### Article III-C—General.

1. The Contracting Officer may require the Contractor to dismiss from the work any employee the Contracting Officer deems incompetent or whose retention is deemed to be not in the public interest, subject however to appeal under the provisions of Article III-O for reinstatement of such employee.

2. At all times the Contractor will use all reasonable efforts in all acts hereunder to protect and subservce the interest of the Government.
3. At all times during the progress of the work, the Contractor will keep at the Plant a duly appointed and qualified representative who shall receive on the part of the Contractor such notices and other communications as the Contracting Officer may give.

[fol. 1493] Article III-D—Walsh-Healey Act.

1. The following representations and stipulations pursuant to the Walsh-Healey Public Contracts Act (Act of June 30, 1936; 49 Stat. 2036; 41 USC 35-45), shall apply to the performance of this contract:

"(a) The Contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

"(b) All persons employed by the Contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: Provided, however, that this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

"(c) No person employed by the Contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day.

or in excess of 40 hours in any 1 week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor.

"(d) No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the Contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

"(e) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima facie evidence of compliance with this subsection.

"(f) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America [fol: 1494] for liquidated damages, in addition to damages for any other breach of the contract, in the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract; and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original Contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a

suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or under-payments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: Provided, that no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the United States of America.

"(g) The Contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the act available for inspection by authorized representatives of the Secretary of Labor."

"(h) The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of \$10,000.00."

2. Stipulation (h) of section 1 of this Article III-D with respect to wages is operative due to determination by the Secretary of Labor of prevailing minimum wage rates for the industry involved.

#### Article III E. Neutrality Act.

Subsection 12-(g) of the Joint Resolution approved by the President, November 4, 1939, provides:

"No purchase of arms, ammunition, or implements of war shall be made on behalf of the United States by any officer, executive department, or independent establishment of the Government from any person who shall have failed to register under the provisions of this joint resolution."

A copy of the Contractor's Certificate of Registration shall be filed in the office of the Chief of Ordnance.

## [fol. 1495] Article III-F—Special Provisions.

1. The extent and character of the work to be done by the Contractor under this contract shall be subject to the approval of the Contracting Officer. In the event that there should be any dispute with regard to the extent and character of the work to be done, the decision of the Contracting Officer shall govern, but the Contractor shall have the right of written appeal pursuant to the provisions of Article III-O of this Title III.

2. The Government shall furnish the Contractor such available schedules of preliminary data, and other available information respecting the work to be done under this contract, and shall make available to the Contractor such Government designs, drawings, specifications, details, standards and safety practices as are on hand in the office of The Quartermaster General or the Chief of Ordnance and which are applicable to the work to be done under this contract.

3. The title to all work under this contract, completed or in the course of construction or manufacture, and to all the Ammunition manufactured or in the process of being manufactured, shall be in the Government. Likewise, upon delivery at the site of the work, or at an approved storage site, title to all purchased materials, tools, machinery, equipment and supplies, for which the Contractor shall be entitled to be reimbursed under Title II hereof, shall vest in the Government. The Government shall bear all risk incident to such ownership. These provisions as to title being vested in the Government shall not operate however, to relieve the Contractor from any duties imposed upon it under the terms of this contract.

4. The Contractor hereby agrees that it will:

(a) Procure and thereafter maintain such surety bonds and insurance in such forms and in such amounts and for such periods of time as the Contracting Officer may require in writing, provided same are obtainable.

(b) Procure all necessary permits and licenses whenever obtainable; obey and abide by all applicable laws, regula-

tions, ordinances and other rules of the United States of America, of the State, Territory or sub-division thereof wherein the work is done, or of any other duly constituted public authority.

(c) Unless the provisions of this paragraph (c) are waived in writing by the Contracting Officer, reduce to writing every contract in excess of Two Thousand Dollars (\$2,000.00) made by it for the purpose of the work under this contract for services (except contracts for employment), materials, supplies, machinery, or equipment, or for the use thereof; insert therein a provision that such contract [fol. 1496] is assignable to the Government; make all such contracts in its own name, and not bind or purport to bind the Government or the Contracting Officer thereunder.

(d) Enter into no sub-contract for any portion of the work without the written approval of the Contracting Officer. Sub-contracts are defined as contracts entered into by the Contractor with others which involve the performance, wholly or in part, at the site of the work, of some part of the work described in Article I-B of Title I.

5. If the performance of any work under this contract is interrupted or prevented by reason of inability to obtain equipment or essential materials to be used in the manufacture of the Ammunition, or by reason of labor shortage or labor disputes, from whatever cause arising, and whether or not the demands of the employees involved shall be reasonable and within the Contractor's power to concede, or by reason of fire, explosion, accident, sabotage, or any cause beyond its control, whether of a nature similar or dissimilar to those hereinbefore set forth, the Contractor shall be excused from performing work or manufacturing Ammunition while or to the extent that it is prevented from so doing by one or more of such causes, and all such work shall be performed and such Ammunition shall be manufactured as soon as practicable after such disability is removed. It is further understood and agreed that the Contractor shall not be liable for any failure or delay in the performance of this contract, or accountable for the loss or destruction of or damages to any materials, tools, machinery, equipment, supplies, Ammunition or

other property located or stored at said Plant or used in connection with the operation thereof except to the extent that such failure, delay, loss, destruction or damage is due to the personal failure on the part of the corporate officers of the Contractor or of other representatives of the Contractor having supervision and direction of the operation of the Plant as a whole, to exercise good faith or that degree of care which they normally exercise in the conduct of the Contractor's business.

#### Article III-G—Records and Accounts—Inspection and Audit.

1. The Contractor agrees to keep records and books of account on a recognized cost-accounting basis, showing the actual or agreed cost to it of all items of labor, materials, equipment, supplies, services, and other expenditures of whatever nature for which reimbursement is authorized under the provisions of this contract. The system of accounting to be employed by the Contractor shall be such as is satisfactory to the Contracting Officer.

[fol. 1497] 2. The Contracting Officer shall at all times be afforded proper facilities for inspection of the work and of the special bank account or accounts provided for in Article II-C of Title II, and shall at all times have access to the premises, work and materials, to all books, records, correspondence, instructions, plans, drawings, receipts, vouchers and memoranda of every description of the Contractor pertaining to said work; and the Contractor shall preserve for a period of three (3) years after completion or termination of this contract, all the books, records and other papers herein mentioned, but the Government undertakes and agrees that final audit of the accounts for each calendar year shall be made by the Government not later than six months after the end of each such year.

3. Any duly authorized representative of the Contractor shall be accorded the privilege of examining the books, records and papers of the Contracting Officer relating to the cost of the work for the purpose of checking up and verifying such cost.

### Article III-H—Preference for Domestic Articles.

1. In the performance of the work covered by this contract the Contractor, sub-contractors, materialmen or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States. The foregoing provision shall not apply to such articles, materials, or supplies of the class or kind to be used or such articles, materials, or supplies from which they are manufactured, as are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or to such articles, materials, or supplies as may be excepted by the head of the department under the provisions of Title III, section 3, of the Act of March 3, 1933, 47 Stat. 1520 (US Code, Title 41, section 10b).

2. Inasmuch as the materials listed below or the materials from which they are made are not mined, produced or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of satisfactory qualities, their use in the work herein specified is hereby authorized without regard to the country of origin:

Asbestos	Chromium	Nickel	Silk
Balsa Wood	Cork	Nickel Alloy	Sisal
China Wood Oil (Tung oil)	Iridium	(Monel Metal)	Teak Wood
	Jute	Platinum	Tin
	Kaurigum	Rhodium	
	Lac	Rubber	

[fol. 1498] Articles, materials, or supplies made in the United States and containing mercury, antimony, tungsten or mica of foreign origin may be used (subject to the requirements of applicable specifications) in the work herein specified, if such manufactured articles, materials or supplies have been made in the United States substantially

all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States.

#### Article III-I—Convict Labor.

The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

#### Article III-J—Workmen's Compensation Laws.

The Act of June 25, 1936 (49 Stat. 1938, 1939; 40 USC 290), provides that the several States have authority to make their Workmen's Compensation Laws applicable to contracts for the construction, alteration or repair of a public building or public work of the United States and the several States are vested with the power and authority to enforce such State Laws on lands of the United States.

#### Article III-K—Accident Prevention.

The Contractor shall, at all times, exercise reasonable precautions for the safety of employees on the work and shall comply with all applicable provisions of Federal, State, municipal and local safety laws and building and construction codes.

#### Article III-L—Officials Not to Benefit.

No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

#### Article III-M—Approval Required.

This contract shall be subject to the written approval of the Secretary of War and shall not be binding until so approved. The date of such approval shall be considered the date of this contract, anything to the contrary herein, notwithstanding.

### Article III-N—Covenant Against Contingent Fees.

The Contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to terminate the contract, or in its discretion, to deduct from payments due the Contractor the amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commissions payable by Contractor upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

### Article III-O—Disputes.

Except as otherwise specifically provided herein, all disputes concerning questions of fact arising under this contract shall be decided by the Contracting Officer, subject to written appeal by the Contractor within 30 days to the Chief of Branch concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto, when the amount involved is \$15,000 or less. When the amount involved is more than \$15,000, the decision of the Chief of Branch shall be subject to written appeal within 30 days by the Contractor to the Secretary of War or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto. The Contracting Officer, the Chief of Branch, and the Secretary of War shall act with reasonable promptness in such matters. In the meantime, the Contractor shall proceed diligently with the work. Nothing in this Article III-O shall be construed to deprive the Contractor of its legal remedies.

### Article III-P—Contractor's Organization and Methods.

Within a reasonable time after the execution of this contract, the Contractor shall submit to the Contracting Officer a chart showing the executive and administrative personnel to be regularly assigned for full or part-time service in connection with the work under this contract, together

with a written statement of the duties of each person and the administrative procedure to be followed by the Contractor for the control and direction of the work; and the data so furnished shall be supplemented as additional pertinent data become available. There shall also be submitted to the Contracting Officer by the Contractor, charts of the various field organizations showing all personnel, other than artisans, mechanics, helpers, and laborers to be assigned for full or part-time service outside of the central-office organization together with a written statement of the duties and rates of pay of each person and the procedure proposed to be followed by the Contractor for the accomplishment of all field work, including temporary requirements; and the data so furnished shall be supplemented as additional pertinent data become available. Statements of procedure shall include purchasing, disbursing, accounting, transportation, storage, employment, housing, sanitation, subsistence, recreation, and similar essential activities and methods.

[fol. 1500] Article III-Q—Changes.

The Contracting Officer may, at any time, by a written order and without notice to the sureties, make changes in or additions to the drawings and specifications, issue additional instructions, require additional work (subject to the provisions of section 4 of Article I-B hereof), or direct the omission of work covered by the contract. If such changes cause a material increase or decrease in the amount or character of the work to be done under this contract, or in the time required for its performance, an equitable adjustment of the amount of the fixed-fee or lump-sum to be paid to the Contractor shall be made and the contract shall be modified in writing accordingly. Any claim for adjustment under this Article must be asserted within 30 days from the date the change is ordered; Provided, however, That the Contracting Officer, if he determines that the facts justify such action, may receive and consider, and with the approval of the Chief of Branch, adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in Article H1-O hereof. But nothing provided

in this article shall excuse the Contractor from proceeding with the prosecution of the work so changed.

#### Article III-R—Patents and Processes.

The Contractor, during the performance of this contract, shall hold and save the Government, its officers, agents, servants and employees, harmless from liability of any nature or kind, including costs and expenses, for and on account of any invention, article (except ammunition, or materials supplied by the Government), or appliances manufactured or used in the performance of this contract (except appliances [heretofor] used by the Government) upon which letters patent have been issued prior to their manufacture or use in the performance of this contract, including their use by the Government at the Plant; and the Contractor hereby grants to the Government a perpetual royalty free license to practice in the Plant, but not elsewhere, and then only for purposes of National Defense, all patented inventions, secret processes, technical information and know-how owned by the Contractor which may be incorporated in the design or operation of the Plant by the Contractor. In the event that the Contractor has utilized in its operation of the Plant, appliances or processes upon which it is obligated to pay royalties to others, the Contractor will endeavor to secure to the Government the right to the use, after the Contractor shall have ceased operating the Plant, of such appliances or processes on terms not less favorable to the Government than the terms of their use by the Contractor. This license shall not be assignable to any transferee of the Plant or any part thereof, and the [fol. 1501] Contractor reserves the privilege of asserting any and all legal rights in and to such patented inventions, secret processes, technical information and know-how against any person, firm or corporation; provided, however, that the provisions of this Article shall not supersede or modify any existing agreements between the Contractor and the Government applying to any such inventions, processes, information or know-how.

#### Article III-S—Statutory Provisions.

It is understood that the respective undertakings to conform to the requirements of the several statutes herein-

before referred to shall be operative only so long as and to the extent that such statutory requirements are applicable hereunder.

#### Article III-T—Definitions.

1. The term "Chief of Branch" refers to the Chief of Ordnance or The Quartermaster General.
2. The terms "The Secretary of War" or "Chief of Branch", shall include their duly authorized representatives as the case may be, other than the Contracting Officer.
3. Except for the original signing of this contract, the term "Contracting Officer", shall include his duly appointed successor or authorized representative.
4. The term "Contracting Officer" as used herein refers to the Contracting Officer appointed by the Chief of Ordnance.

#### Article III-U—Alterations.

The following changes were made in this contract before it was signed by the parties hereto:

Page 7, Paragraph 6, next to last word on next to last line "he" changed to "it".

Page 7, Paragraph 7, in 5th and 12th lines insert the words, "or Western's" after "own" in line 5, and "Contractors," in line 12, and in line 13 insert the words "or Western" after "Contractor".

Page 10, Article II A (b) change Title III to Title I.

With reference to page 11, Paragraph (k), it is understood that the \*\*\* amount includes expenses for general administration incurred by Contractor prior to the date when the first payment, if any, accrues and that such monthly payments are cumulative for the 20 month period and shall not be deemed to be necessarily expendable in the amount specified in each month.

Page 2, 3rd whereas clause, line 7, "design" changed to "layout". \*amount of the deemed general expense shall be considered fixed but such \*\*

[fol. 1502] In Witness Whereof, The parties hereto have executed this contract in triplicate as of the day and year first above written.

THE UNITED STATES OF AMERICA,

L. H. CAMPBELL, JR.,  
Brig. Gen., U. S. Army.

(Contracting Officer)

Approval Recommended:

Dec 7, 1940

C. M. WESSON, Major Gen.  
Chief of Ordnance.

THE UNITED STATES CARTRIDGE COMPANY,  
(Contractor)

By J. M. OLIN, Pres.,  
East Alton, Illinois,  
(Business Address)

Two Witnesses as to  
execution by the Contractor:

SIDNEY DE KAY,  
New York, N. Y.,  
30 Rockefeller Plaza,  
(Address)

GRACE L. OLSEN,  
New York, N. Y.,  
30 Rockefeller Plaza.  
(Address)

Approved December 14, 1940. By direction of the Secretary of War.

ROBERT P. PATTERSON,  
The Assistant Secretary of War.

10,196

W-ORD-491

[fol. 1503] I, Spencer T. Olin, certify that I am the Secretary of the Corporation named as Contractor herein; that J. M. Olin, who signed this contract on behalf of the Con-

tractor was then President of said Corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Corporate Seal

SPENCER T. OLIN.

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, J. M. Olin, who signed this contract for The United States Cartridge Company, had authority to execute the same; and is the individual who signs similar contracts on behalf of this corporation with the public generally:

L. H. CAMPBELL, JR.,

Brig. Gen., U. S. Army.

[fol. 1504]

Performance Bond.

Know All Men by These Presents, That we, The United States Cartridge Company, Baltimore, Maryland, a corporation organized and existing under the laws of the State of Maryland, as Principal, and Western Cartridge Company, East Alton, Illinois, a corporation organized and existing under the laws of the State of Delaware, as Surety, are held and firmly bound unto the United States of America, hereinafter called the Government, in a penal sum unlimited in amount for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents:

The Condition of This Obligation Is Such, that whereas the principal entered into a certain contract No. W-ORD-491 hereto attached, with the Government, dated December 5, 1940, for

"Operation of a plant for the manufacture of Caliber .30 and Caliber .50 Small Arms Ammunition of all types."

Now Therefore, If the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Government, with or without notice to

he surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

In Witness Whereof, the above-bounden parties have executed this instrument under their several seals this 5th day of December, 1940, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

{fol. 1505]

**THE UNITED STATES CARTRIDGE COMPANY,**

(Corporate Principal)

Baltimore, Maryland,

(Business address)

By J. M. OLIN, President.

(Affix Corporate Seal)

Attest:

SIDNEY G. DE KAY, New York, N. Y.

**WESTERN CARTRIDGE COMPANY,**

(Corporate Surety)

East Alton, Illinois,

(Business address)

By J. M. OLIN, Vice-President.

(Affix Corporate Seal)

Attest:

SIDNEY G. DE KAY, New York, N. Y.

Certificate as to Corporate Principal.

I, Spencer T. Olin, certify that I am the Secretary of the corporation named as principal in the within bond; that J. M. Olin, who signed the said bond on behalf of the

principal, was then President of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

SPENCER T. OLIN. (Corporate Seal)

Certificate as to Corporate Surety.

I, Spencer T. Olin, certify that I am the Secretary of the corporation named as surety in the within bond; that J. M. Olin, who signed the said bond on behalf of the surety, was then Vice-President of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

SPENCER T. OLIN. (Corporate Seal)

W-ORD-491

[fol. 1506]

W-ORD-491

Army and Navy Munitions Board  
Munitions Building  
Washington, D. C.

August 12, 1940.

To be included as part of all Army and Navy contracts or purchase orders for which a preference rating is necessary.

Preference Rating of This Contract or Order.

1. The Army and Navy Munitions Board preference rating assigned to this contract is "ANMB preference A-1".

(Insert rating here)

2. This rating will be placed conspicuously on all sub-contracts issued by you and on all orders for materials, services, machine tools, or other items contributory to this contract.

3. The purpose of the preference system is to insure deliveries on the dates specified in the contracts, subcontracts and purchases. In case of conflicts between or among two or more orders, the preference ratings indicate which one is to receive precedence in performance. This is to be interpreted to mean that the highest preference contract will not necessarily be worked on first; but that the highest preference must be completed at the delivery date specified at the expense of all lower preference. Advantage will not be taken of a high preference rating to secure deliveries of materials, tools, etc., far in advance of their need or in greater quantities than required for that contract.

4. All contractors, subcontractors and their suppliers are requested to report to the contracting officer or the inspector any abuses of the procedure as outlined herein. It is expected that the individual members of industry will freely cooperate in this matter so that the common objectives can be obtained with the minimum amount of government interference with the internal operations of industry.

5. When and where there is no shortage in the available supply, nothing in these instructions should be construed to discourage deliveries earlier than those asked for by the purchaser.

6. a. If the completion of this contract, despite the preference rating assigned herein, is, or threatens to be delayed due to inability to secure essential materials, supplies, [fol. 1507] services, or production machinery, the contractor will report the facts to, and request assistance of the Priorities Committee, Army and Navy Munitions Board. This report shall contain the following information:

Army or Navy Contract Number W-ORD 491; Preference Rating A-1;

Dated Dec. 5, 1940; Signed by L. H. Campbell, Jr., Brig. Gen., U. S. Army;

Delivery Date: Within 25 months from date of contract;

For Manufacture of following quantities of ammunition:

## (Items and quantities)

300,000,000 rounds Cartridges, Ball, Cal. .30 M2

100,000,000 " " " Tracer " .30 M1

280,000,000 " " " Armor Piercing, Cal. .50 M2

53,000,000 " " " Tracer Cal. .50 M1

Brief comments justifying your request for assistance and indicating the nature, location, and extent of difficulties being experienced.

b. Copies of this report shall be furnished the government inspector and the contracting officer.

c. If the request for assistance is approved by the Priorities Committee, such other assistance will be given as may be appropriate and practicable.

L. H. CAMPBELL, JR.,

Brig. Gen., U. S. Army,

Contracting Officer.

[fol. 1508] Mr. Bond: Now, in connection with Mr. McRoberts' summary to you of the general nature of the contract, I desire also to call attention to two provisions on page 19. One paragraph, I am quoting:

"The contractor", that is the United States Cartridge Company, "is the manufacturer of, or a regular dealer in, materials, supplies, articles or equipment to be manufactured or used in the performance of the contract."

And subparagraph C:

"No person employed by the contractor in the manufacture or furnishing of materials, supplies, articles or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day; or in excess of 40 hours in any one week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor."

Q. (Mr. McRoberts) Now, Mr. Castiel, was that contract, Defendant's Exhibit 20, supplemented from time to time? A. It was.

Q. I believe there were a total of some 37 different supplements to that contract?

A. Thirty-seven supplements and change orders.

Q. And change orders? A. Yes, sir.

Q. Now some of those merely added additional numbers [fol. 1509] of cartridges to be produced or made changes in the fees to be paid, or similar changes?

A. That is correct.

Q. Now have you gone through those particular supplements to determine which ones in your opinion contain any changes in the provisions respecting the operation of the plant, and the relationship of the defendant and the Government to the plant, and to the work being done at the plant? A. Yes, sir, I have been through them.

Q. Will you call my attention to the first supplement which contains such provision, please?

A. It changes the work to be done.

Q. Not the extent of the work to be done, but the first supplement that contains any change is the terms of the contract with respect to the manner of operation?

A. Well, on that supplement 7, would probably be the first one. The other [plants] up to that time were increasing the size of the plant.

Q. Will you explain that, Mr. Casteel, please?

A. It was increased, the size and capacity of the plant was increased as war clouds gathered, and it was increased. I believe it was called "waves", there were three increases, over and above the original plan. The first two increases the size of the plant, and the third one simply increases the machinery by putting more machinery in the space that was already there.

[fol. 1510] Q. The second wave more than doubled the size of the plant as originally contemplated?

A. That is correct. And certain changes were made by the supplements to provide for the extension and for the ammunition to be produced through these additional facilities. And they made supplements to show the increased capacity. But the first one that changed the contract much was Supplement 7, which added negotiation amendment, which became a law as soon as the contract was written, and reduced fees and established a Tool Committee. (A paper is marked "Defendant's Exhibit

23"). But all through the 37 supplements, the generally favorable terms of the contract were not changed. Nothing was done to the provision you read about title. The Ordnance Department used two systems of supplementing this contract. One was by change order and the other was by supplement. They never were able to give me a satisfactory explanation as to the difference between the two. Those change orders were easier to execute in that they were executed by the commanding officer in the Philadelphia office, whereas the supplements were more of a formal nature and had usually the Chief of Ordnance and sometimes even underscored "Patterson" on them, and they went to Washington. They couldn't explain the difference to me. I asked them many times because I wanted to be sure. They would go along and maybe have five or six change orders, and then make a supplement, what they call "formalized" change orders, and incorporate in [fol. 1511] this order all they had done in the previous change orders.

Mr. Bond: In order that I may get it clear, the original contract covers manufacture of quantities of ammunition set out on page 5? A. Yes, sir.

Mr. Bond: And upon the manufacture of that ammunition, then, that contract is therupon completed? Is that it?

A. Well, they had a system as far as ammunition was concerned, the Government for some reason that I never did understand, placed orders with us. For instance, the original contract calls for a certain quantity of ammunition and estimated the amount it is going to cost. And then they would decide they wanted more ammunition, so they would come and increase the amount of ammunition which they wanted us to make, and let all those change orders, and supplements cover that very point.

Mr. Bond: But after this ammunition was manufactured and accepted, that terminated this contract?

A. No, sir, they kept adding more to the order.

Mr. Bond: And those additional orders were covered by supplementary contracts? A. Yes, sir, change orders,

Mr. Bond: What quantities of ammunition manufactured in addition to those set out on page 5 would be manufactured by the Cartridge Company either under the terms of a change order or supplementary contract?

[fol. 1512] A. That is correct.

The Court: It was both? A. Yes, sir.

Mr. Bond: Was the United States Cartridge Company operated through officers and personnel of the Western Cartridge Company, now Olin Industries?

A. The president of the company and of the United States Cartridge Company at the beginning was the then vice-president of the Western Cartridge Company, but he is now the president of the Olin Industries.

Mr. Bond: All your general officers were also officers or employees of the Western Cartridge Company, now Olin Industries?

A. All of the corporate officers were East Alton people, yes, sir, and were not on salary or anything at the plant.

Q. (Mr. McRoberts) Mr. Casteel, these change orders and the supplements which added additional ammunition, did they provide for that additional ammunition to be manufactured under the terms and provisions of the original contract? A. That is correct.

Mr. Bond: Would the provisions in the supplements refer to the original contract?

A. Yes, sir, they referred to the original.

Q. Are they there? A. Yes, sir.

[fol. 1513] Mr. Bond: Now I understand that these supplements, I am to have opportunity sometime in the near future to examine them and if I feel that in my opinion, with what you have introduced, further material ought to be considered, I will have an opportunity?

Mr. McRoberts: That is correct. I am going to offer everything I think is material, and if Judge Bond wishes to add anything, he may.

Q. (Mr. McRoberts) Mr. Casteel, I will show you a document which has been identified as Defendant's Ex-

hibit 23 and ask you if that is the supplement No. 7 to Defendant's Exhibit 20, to which you have referred?

A. Yes, sir, it is.

Q. And that is the original signed contract? A. It is.

Q. Now is this typical of the form which these supplement agreements take?

A. That is typical of the form of a supplement, it isn't typical of a change order.

Mr. McRoberts: I think I will offer in evidence Exhibit 23 in its entirety then, and will call Your Honor's attention merely to the fact that in addition to increasing the quantities it adds on page 6, it makes a change in Title No. 3 of the original contract by deleting a particular paragraph and substituting a new paragraph with reference [fol. 1514] to renegotiation under the Renegotiation Act.

Mr. Bond: I make the same objection to the offer of that document as I did to Exhibits 20 and 22.

The Court: It will be accepted subject to objection.

Contr. No. W-ORD-491 Supp  
DA W-GRD-34

SUPPLEMENTAL CONTRACT  
to  
COST-PLUS-A-FIXED-FEE OPERATION CONTRACT

WAR DEPARTMENT

APPROVAL RECOMMENDED:

, 1942

~~Col. WESSON L. H. Campbell, Jr.~~  
Major General  
Chief of Ordnance

*JHC*

Contractor: UNITED STATES CARTRIDGE COMPANY,  
BALTIMORE, MARYLAND.

Supplemental Contract for: Operation additional to  
that provided in Contract No. W-ORD-491 and previous  
supplements thereto.

Estimated Cost of Operating the Plant:

(Original)	\$ 87,279,790.00
(Additional Supp. 1)	\$123,604,375.00
(Additional Supp. 6)	\$166,040,215.00
(Additional Supp. 7)	\$108,782,183.00

Fixed Fees for Operation unchanged by this Supplement.

Place: St. Louis, Missouri.

Payments to be made by the Finance Officer, U. S. Army,  
at: St. Louis, Missouri.

The supplies and services to be obtained  
by this instrument are authorized by, are for the  
purposes set forth in, and are chargeable to the  
following Procurement Authorities, the available  
balances of which are sufficient to cover the cost  
of the same.

ORD 24,694 P94-13 A5910.085-2  
ORD 36,204 P11-99 A1005-23  
ORD 36,206 P11-99 A1005-23  
ORD 7670 P2-99 A0141-03  
ORD 7669 P2-99 A0141-03  
ORD 7887 P11-99 A1005-23  
ORD 27152 P11-99 A1005-23

This contract is authorized by the  
following laws: The act approved  
December 18, 1941 (Pub. Law 354-77th  
Cong.) and Executive Order No. 9001  
dated December 27, 1941.

*G. H. DREWRY*  
G. H. DREWRY  
Colonel, Ord. Dept.

SUPPLEMENTAL CONTRACT.

THIS SUPPLEMENTAL CONTRACT, entered into this 3<sup>rd</sup> day of June, 1942, by and between the UNITED STATES OF AMERICA, hereinafter called "the Government", represented by the Contracting Officer executing this agreement and the UNITED STATES CARTRIDGE COMPANY, a corporation organized and existing under the laws of the State of Maryland, with its principal office in Baltimore, Maryland, hereinafter called the "Contractor,"

WITNESSETH THAT:

WHEREAS, there is now in force between the parties hereto a certain contract which provides for the operation of a plant for the manufacture of Caliber .30 and Caliber .50 small arms ammunition of certain types, said contract bearing approval date of December 14, 1940, being identified by the Government as "Contract No. W-ORD 491" and being hereinafter sometimes referred to as the "Contract of December 14", and

WHEREAS, the Government has modified said Contract of December 14 by Supplement No. 1 thereto, providing for an option in the Government to order operation of the Plant additional to that provided for in the Contract of December 14, and said option has been exercised by letters dated August 22 and September 27, 1941, and

WHEREAS, said Contract of December 14 has been further modified by Letters Contract dated June 17, 1941, June 17, 1941, October 10, 1941, and November 17, 1941, said Letters Contract being referred to respectively as Supplements No. 2, 3, 4 and 5, and

WHEREAS, the Government has further modified said Contract of December 14 by incorporating the aforementioned Letters Contract into a formal supplemental contract and has ordered additional quantities of ammunition, said modification having been accomplished by Supplement No. 6, and

WHEREAS, the Government now desires further to modify said Contract of December 14 to provide for a Small Arms Ammunition Tool Committee and to order additional quantities of ammunition from the Contractor, and the Contractor has agreed to such modification upon the terms, conditions and provisions hereinafter set forth, and

WHEREAS, the accomplishment of such work entered into after negotiations approved by the Secretary of War and without advertising for proposals, is authorized by law, and

WHEREAS, as a result of such negotiations, the Secretary of War has directed that the Government enter into a supplemental contract with the Contractor for the accomplishment of the above described additional work,

NOW, THEREFORE, the parties hereto do mutually agree that the said Contract of December 14 shall be and it is hereby modified in the following particulars:

W-ORD 491  
DA W-ORD 34  
Supp 7

A. Change Section 3 of Article I-B, Title I, page 5, as previously changed by Supplements No. 1 and 6, to read:

The Contractor agrees to manufacture, subject to the terms and conditions hereinafter set forth, the following quantities of ammunition, including cups:

a. Cartridges, Ball, Caliber .30, M2, of which a minimum of 50% shall be of Aircraft Grade.

- (1) 150,000,000 rounds (Contract of December 14)
- (2) 487,500,000 rounds (Supplement No. 1)
- (3) 577,171,200 rounds (Supplement No. 6)
- (4) 580,000,000 rounds (Additional)

b. Cartridges, Armor Piercing, Caliber .30, M2, of which a minimum of 50% shall be of Aircraft Grade.

- (1) 150,000,000 rounds (Contract of December 14)
- (2) 150,000,000 rounds (Supplement No. 1)
- (3) 259,102,000 rounds (Supplement No. 6)

c. Cartridges, Tracer, Caliber .30, of which a minimum of 50% shall be of Aircraft Grade.

- (1) 100,000,000 rounds (Contract of December 14)
- (2) 112,500,000 rounds (Supplement No. 1)
- (3) 200,060,000 rounds (Supplement No. 6)

d. Cartridges, Armor Piercing, Caliber .50, M2, of which a minimum of 75% shall be of Aircraft Grade.

- (1) 280,000,000 rounds (Contract of December 14)
- (2) 360,000,000 rounds (Supplement No. 1)
- (3) 408,306,000 rounds (Supplement No. 6)
- (4) 337,835,100 rounds (Additional)

e. Cartridges, Tracer, Caliber .50, of which a minimum of 75% shall be of Aircraft Grade.

- (1) 53,000,000 rounds (Contract of December 14)
- (2) 90,000,000 rounds (Supplement No. 1)
- (3) 143,160,000 rounds (Supplement No. 6)
- (4) 78,685,500 rounds (Additional)

f. Ball Bullet Jacket Cups, Caliber .30

- (1) 251,000 pounds

g. Cartridge Case Cups, Caliber .30

- (1) 2,144,000 pounds

h. Armor Piercing Bul . . . Jacket Cups, Caliber .50

(1) 2,467,000 pounds

Said ammunition, cases and cups shall be manufactured in accordance with specifications which shall be furnished promptly to the Contractor by the Contracting Officer and the Contracting Officer shall at all times keep the Contractor informed of any changes which may be made in such specifications.

While the Contractor shall make every reasonable effort to manufacture ammunition conforming to the specifications referred to herein it is recognized that variances therefrom are unavoidable and the Contractor shall, if possible, at the direction of the Contracting Officer, re-work rejected ammunition and shall not be responsible for ammunition finally rejected.

B. Change Article I-B of Title I by adding the following Section 10 at the end thereof on page 7:

10. a. The Contractor shall establish in the City of Chicago, Illinois, or in such other city as it may designate, an office to be known as the Office of the Small Arms Ammunition Tool Committee. Said Office shall consist of a Manager and such assistants, clerks, stenographers, engineers, and specialists as may be deemed necessary to the functions of said Committee, and such persons shall be employed by the Contractor.

b. The Committee shall include representatives of Remington Arms Company, Inc., U. S. Rubber Company, The Kelly Springfield Engineering Company, Federal Cartridge Corporation, Chrysler Corporation, and the Simmons Company, all of which are presently engaged in establishing and operating Small Arms Ammunition plants for the Government under contracts with the Government. Such representatives will serve on the Committee in an advisory capacity to the Manager and the Contractor shall not be responsible for payment of the salaries and traveling expenses of such representatives.

c. The functions of the Committee shall be to collect, correlate, and analyze information regarding perishable tools to be used in the manufacture of Small Arms Ammunition and regarding spare parts for the production equipment also to be used in such manufacture. Such information shall specifically include data regarding capacity of tool vendors, tool mortalities, man-hours for the production of perishable tools, a breakdown of machine tool operations in the manufacture of perishable tools, lists of existing and potential tool vendors and data on performance, equipment and capacity of said vendors, analysis of steel requirements, a study of present and possible new processes in the production of tools and any other pertinent information or data concerning perishable tools; provided, however, that the Committee shall not collect information regarding prices nor shall it concern itself in any way with the allocation of vendors among the companies represented. The Committee shall perform the same functions with respect to spare parts for Small Arms Ammunition production equipment and shall make such other factual studies as may be requested from time to time by the Government. The information and data gathered by the Committee shall be presented to the Contracting Officer or his duly authorized representative for such use as he shall see fit.

Defendant's Exhibit 23.

d. The Contractor shall use all reasonable efforts in carrying out the work under this Section 10, but the Contractor shall not be held responsible for errors in judgment or for the failure on the part of any one or more of the representatives of the above-mentioned companies adequately to perform his or their obligations.

e. It is estimated that the cost of the work under this Section 10 will be approximately Two Hundred Thousand Dollars (\$200,000.00). Said estimated cost is exclusive of the cost of the ammunition set forth in Article I-C of Title I.

C. Change Article I-C, Title I, page 8, as previously changed by Supplements No. 1 and 6, to read:

It is estimated that the total cost of the Contractor's performance under this Title I, exclusive of the Contractor's fee will be approximately as follows:

a. Eighty-Seven Million, Two Hundred Seventy-Nine Thousand, Seven Hundred Ninety Dollars (\$87,279,790.00) (Contract of December 14)

b. One Hundred Twenty-Three Million, Six Hundred Four Thousand, Three Hundred Seventy-Five Dollars (\$123,604,375.00) (Supplement No. 1)

c. One Hundred Sixty Six Million, Forty Thousand, Two Hundred Fifteen Dollars (\$166,040,215.00) (Supplement No. 6)

d. One Hundred Eight Million Seven Hundred Eighty Two Thousand One Hundred Eighty Three Dollars (\$108,782,183.00) (Additional)

If it is further estimated that the total quantity of ammunition, cases and caps manufactured under this Title III will have been delivered to the Government within twenty (20) months from the signing of this Supplemental Contract. It is expressly understood, however, that neither the Government nor the Contractor guarantees the correctness of any of the estimates set forth in this Article I-C. The estimates of costs are based upon detailed estimates agreed to by both the Government and the Contractor, copies of which are on file in the office of the Chief of Ordnance.

D. Change Article III-G of Title III by adding the following Section 4 at the end thereof:

4. In order, so far as possible, to avoid duplication in accounting and auditing functions performed by the Contractor and the Government, it is agreed that the following accounting and auditing functions shall be performed by the Government exclusively:

a. Time checking (not timekeeping) in the field or in the plant.

b. Audit of original payrolls of the Contractor (or such portions hereof as are applicable) where such payrolls are prepared by the Contractor.

c. Checking of equipment, rentals and the preparation and delivery of rental bills to the Contractor for payment.

such accounting and auditing functions as may be effectively performed by the Government employees and to which the Contracting Officer and the Contractor may mutually agree in writing.

It is further agreed that if any of the accounting and auditing functions performed exclusively by the Government do not adequately discharge such accounting and auditing functions to the satisfaction of the Contractor, the Contractor, with the approval in writing of the Contracting Officer, may perform such additional checking and auditing as may be so approved. The Contractor shall be reimbursed for the cost of such additional accounting and auditing functions as are so approved.

E. Change Paragraph d. of Section 1 of Article III-B of Title III, page 10, to read:

- d. (1) No person under sixteen years of age and no convict labor will be employed by the Contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.
- (2) No girl under eighteen years of age shall be employed for more than eight hours in any one day, or between the hours of 10 p.m. and 6 a.m., or in any way contrary to state laws governing hours of work.
- (3) No girl under eighteen years of age shall be employed in any operation or occupation which, under the Fair Labor Standards Act or under any state law or administrative ruling, is determined to be hazardous in nature or dangerous to health.
- (4) For every girl under eighteen years of age employed by him the Contractor shall obtain and keep on file a certificate of age showing that the girl is at least sixteen years of age.
- (5) A specific and definite luncheon period of at least 30 minutes shall be regularly granted any women workers under eighteen years of age.
- (6) No girl under eighteen years of age shall be employed at less than the minimum hourly rate set by or under the Fair Labor Standards Act or the Walsh-Healey Public Contracts Act for the industry in which the exemption is granted.

F. Change Title III by deleting Article III-H on page 23 thereof and substituting the following Article:

ARTICLE III-H - RENEGOTIATION PURSUANT TO SECTION 403 OF THE 6th SUPPLEMENTAL NATIONAL DEFENSE APPROPRIATION ACT, 1942.

1. Each subcontract entered into by the Contractor hereof upon a lump-sum or fixed-price basis which is in excess of \$100,000 shall include the following provisions:

- "a. At such period or periods when, in the judgment of the Secretary of War, profits accruing to the subcontractor under this contract can be determined with reasonable certainty, the Secretary of War

upon the written demand of the Secretary of War, will renegotiate the contract price with a view of eliminating such profits as are found as a result of such renegotiation to be excessive.

- b. In the event that this renegotiation results in a reduction of the contract price, the amount of such reduction shall, as directed by the Secretary of War, either be deducted by the Contractor from payment to the subcontractor under this contract; or be paid by the subcontractor directly to the Government, or be repaid by the subcontractor to the Contractor, and the subcontract shall be modified in writing accordingly.

The subcontractor agrees that the Contractor shall not be liable to the subcontractor for or on account of any amount repaid to the Contractor or paid to the Government by the subcontractor or deducted by the Contractor from payments under this subcontract, pursuant to directions from the Secretary of War in accordance with the provisions of this Article. Under its contract with the Government, the Contractor is obligated to pay or credit to the Government all amounts repaid by or withheld from the subcontractor hereunder.

- d. The term 'Secretary of War' as used in this article includes his duly authorized representatives, including the Contracting Officer."

Except as herein modified, the terms and conditions of the Contract, effective 14, as amended, shall continue in full force and effect and shall apply with equal force to the work added by this Supplemental Contract.

The Supplemental Contract shall be subject to the written approval of the Secretary of War or of the Under Secretary of War and shall not be binding until so approved.

The following changes were made in this contract before it was signed by the parties hereto:

1. The following Paragraph J was added:

J. Change Article 1-D, Title I, page 8 as previously changed by Supplement No. 6, such change to become effective with regard to all fees accruing during the month of June, 1942 and thereafter, to read:

In consideration for its undertaking under this Title I the Contractor shall receive the following which shall constitute complete compensation for the Contractor's services under this Title I, including profit:

(over)

W ORD 441  
DA W CRD-3  
Sipp.

IN WITNESS WHEREOF, the parties have executed this contract in triplicate  
as of the day and year first above written.

THE UNITED STATES OF AMERICA

G. H. BREWRY

G. H. BREWRY  
Colonel, Ord. Dept.  
(Contracting Officer appointed  
by the Chief of Ordnance)

THE UNITED STATES CARTRIDGE COMPANY

Two Witnesses to execution  
by the Contractor:

Frank A. Olin

East Alton, Ill.

(Address)

By

J. M. Olin

J. M. Olin, President

East Alton, Illinois

(Business Address)

Russell Carter

East Alton, Illinois

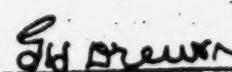
(Address)

I, Spencer T. Olin, certify that I am the Secretary of the Corporation named as Contractor herein; that J. M. Olin who signed this contract on behalf of the Contractor was then President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body; and is within the scope of its corporate powers.

(CORPORATE SEAL)

  
Spencer T. Olin

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, J. M. Olin, who signed this contract for the United States Cartridge Company, had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

  
G. H. DREWRY  
Colonel, Ord. Dept.

CONSENT OF SURETY

To Supplemental Contract No. 7 dated June 3, 1942, in connection with Contract W-ORD-491 approved December 14, 1940, between the United States of America and The United States Cartridge Company, Baltimore, Maryland, for operation of a Plant for the manufacture of Small Arms Ammunition.

Consent of Surety, is hereby given to the foregoing Supplemental Agreement, and the Surety agrees that its performance bond executed December 5, 1940 in connection with said Contract W-ORD-491 shall apply to and cover the due performance of the Contract as so modified.

IN WITNESS WHEREOF, the undersigned Surety has executed this instrument under its seal this 3rd day of June, 1942.

WESTERN CARTRIDGE COMPANY  
East Alton, Illinois

Attested:

Russell R. Casteel

Secretary

By J. M. Olin (Corporate Seal)  
J. M. OLIN  
Vice President

CERTIFICATE AS TO CORPORATE SURETY

I, Russell R. Casteel, certify that I am the Secretary of the corporation named as surety in the above CONSENT OF SURETY, that J. M. Olin, who signed the said CONSENT OF SURETY on behalf of the surety, was then Vice President of said corporation, that I know his signature, and his signature thereto is genuine; and that the said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

Russell R. Casteel

Spencer T. Olin (Corporate Seal)

[fol. 1525] Q. Now Mr. Casteel will you tell me the next supplemental contract which contains any change in the conditions of the contract and the terms under which the ammunition was to be manufactured?

A. Supplement No. 11, dated August 30, 1943.

(The document is marked "Defendant's Exhibit 24".)

Q. Mr. Casteel, I will show you a document which has been identified as Defendant's Exhibit 24 and ask you if that is a copy of Supplement No. 11? A. It is.

Mr. McRoberts: I offer in evidence, if Your Honor please not the entire document. It in part reduces your fees and compensation, does it not?

[fol. 1536] (Defendant's Exhibit 24.)

W-ORD-491

Supp. 11

#### Article III-D—Walsh-Healey Act.

The representations and stipulations required by Section I of the Act of June 30, 1936 (Walsh-Healey Act, Public No. 846, 74th Congress) to be included in all contracts therein specified are hereby incorporated and made a part of this Contract with the same force and effect as if fully set forth in the Contract. Such representations and stipulations shall be subject to all applicable regulations, determinations, and exemptions of the Secretary of Labor now or hereafter in effect.

M. Change paragraph (a) of Section 4, of Article III-F, Title III, page 21, to read as follows:

(a) Procure and thereafter maintain such bonds and insurance in such forms and in such amounts and for such periods of time as the Contracting Officer may require in writing and shall be reimbursed for the cost thereof as provided in Title II hereof;

In every instance where this contract requires the United States to pay the premium on a bond or insurance policy, the bond or insurance policy shall contain an in-

dorsement or other recital excluding by appropriate language any claim on the part of the insurer or obligor to be subrogated, on payment of a loss or otherwise, to any claim against the United States;

The Contractor shall give the Contracting Officer or his representative immediate notice in writing of any suit or action filed against the Contractor arising out of the performance of this contract and of any claim against the Contractor the cost and expense of which are reimbursable under the provision of Title II hereof, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of insurance coverage. The Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor. Insofar as the following shall not conflict with any policy or contract of insurance, and upon request of the Contracting Officer, the Contractor shall do any and all things to effect an assignment and subrogation in favor of the Government of all Contractor's rights and claims, except against the Government, arising from or growing out of such asserted claims, and, if required by the Contracting Officer, shall authorize representatives of the Government to settle and/or defend any such claim and to represent or take charge of any such litigation affecting the Contractor, provided, however, anything to the contrary notwithstanding, to the extent such claim may not be reimbursable [fol. 1537] under Title II hereof, the Contractor shall not be required to make such assignment, and the Contractor may, through its own counsel, at its own cost and expense, participate in the settlement and/or defense and litigation of such claim.

X. Change Title III, Article III-H, page 23, as previously changed by Supplement No. 7, by deleting said Article and inserting the following Article III-H, in lieu thereof:

**Article III-H—Renegotiation Pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as Amended.**

(a) Upon the written demand of the Secretary, at such period or periods when, in the judgment of the Secretary,

the profits accruing to the Contractor under this contract can be determined with reasonable certainty, the fixed-fee specified in Article I-D will be renegotiated to eliminate therefrom any amount found as a result of such renegotiation to represent excessive profits. The demand of the Secretary shall fix a place for renegotiation and a time for commencement thereof not later than one year after the close of the fiscal year of the Contractor within which completion or termination of the Contract, as determined by the Secretary, occurs.

(b) The Contractor will furnish to the Secretary such statements of actual costs of production and such other financial statements, at such time and in such form and detail as the Secretary may prescribe, and will permit such audits and inspections of its books and records as the Secretary may request.

(c) The Government shall retain from amounts otherwise due the Contractor, or the Contractor shall repay to the Government if paid to him, any amount of the fixed-fees specified in Article I-D found as a result of such renegotiation to represent excessive profits and not eliminated through reductions in contract price or otherwise, as the Secretary may direct.

(d) The Contractor will include in each subcontract for an amount in excess of \$100,000 made under this contract after the date of the supplemental agreement which added this Article, the following provisions:

Article—Renegotiation Pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as Amended.

(1) Upon the written demand of the Secretary, at such period or periods when, in the judgment of the Secretary, the profits accruing to ..... under this (subcontractor)

contract can be determined with reasonable certainty, the Secretary and ..... will renegotiate the con- (subcontractor)

tract price (or fixed-fee hereunder) to eliminate therefrom [fol. 1538] any amount found as a result of such renegotia-

tion to represent excessive profits. The demand of the Secretary shall fix a place for renegotiation and a time for the commencement thereof not later than one year after the close of the fiscal year of the subcontractor within which completion or termination of the contract, as determined by the Secretary, occurs.

(2) ..... will furnish to the Secretary  
 (subcontractor)

such statements of actual costs of production and such other financial statements, at such times and in such form and detail, as the Secretary may prescribe, and will permit such audits and inspections of its books and records as the Secretary may request.

(3) Any amount of the contract price (or fixed-fee hereunder) found as a result of such renegotiation to represent excessive profits shall, as directed by the Secretary,—

(A) Be deducted by ..... from pay-  
 (contractor)

ments otherwise due to ..... under this  
 (subcontractor)

contract; or

(B) Be paid by ..... directly to the  
 (subcontractor)

Government, if paid to him; or

(C) Be [eliminate] through reductions in the contract price (or fixed-fee hereunder) or otherwise.

(4) ..... agrees that .....  
 (subcontractor) (contractor)

shall not be liable to ..... for or on account  
 (subcontractor)

of any amount paid to the Government by .....  
 (subcontractor)

or deducted by ..... from payments other-  
 (contractor)

wise due under this contract, pursuant to directions from the Secretary in accordance with provisions of this Article. Under its contract with the Government .....  
 (contractor)

is obligated to pay or credit to the Government all amounts withheld by it from ..... hereunder.

(subcontractor)

[fol. 1539] (5) ..... agrees (a) upon direction of the Secretary, to include in any subcontract hereunder sections (1) to (6) inclusive of the Article, and (b) to make no [subdivisions] of any contract or subcontract for the purpose of evading the provisions of this section, and (c) to repay to the Government the amount of any reduction in the contract price of any such subcontract which results from renegotiation thereof by the Secretary, and which the Secretary directs ..... (subcontractor)

tion of the Secretary, to include in any subcontract hereunder sections (1) to (6) inclusive of the Article, and (b) to make no [subdivisions] of any contract or subcontract for the purpose of evading the provisions of this section, and (c) to repay to the Government the amount of any reduction in the contract price of any such subcontract which results from renegotiation thereof by the Secretary, and which the Secretary directs ..... (subcontractor)

to withhold from payments otherwise due under such subcontract and actually unpaid at the time ..... (subcontractor)

received such direction.

(6) As used in this Article,—

(a) The term "Secretary" means the Secretary of War or any duly authorized representative of the Secretary including the Contracting Officer.

(b) The term "subcontract" means any purchase order or agreement to perform all or any part of the work, or to make or furnish any material, part, assembly, machinery, equipment or other personal property, required for the performance of this contract, unless exempt under or exempted pursuant to Section 403 (i) of the Sixth Supplemental National Defense Appropriation Act of 1942 as amended by Section 801 of the Revenue Act of 1942.

(c) The Terms "renegotiate" and "renegotiation" have the same meaning as in Section 403 (b) of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

(d) The term "this contract" means this contract as modified from time to time.

(e) (1) The Contractor agrees to make no subdivisions of any contract or subcontract for the purpose of evading the provisions of this Article.

(2) If any renegotiation between the Secretary and any subcontractor pursuant to the provisions required

by section (d) hereof results in a reduction of the contract price or fixed-fee of the subcontract, the Government shall retain from payments otherwise due to the Contractor, [of] the Contractor shall repay to the Government, as the Secretary may direct, the amount [fol. 1540] of such reduction which the Secretary directs the Contractor to withhold from payments otherwise due to the subcontractor under the subcontract and actually unpaid at the time the Contractor received such direction.

(f) As used in this Article,—

(1) The term "Secretary" means the Secretary of War or any duly authorized representative of the Secretary, including the Contracting Officer.

(2) The term "subcontract" means any purchase order or agreement to perform all or any part of the [owrk], or to make or furnish any material, part, assembly, machinery, equipment or other personal property, required for the performance of this contract, unless exempt under or exempted pursuant to Section 403 (i) of the Sixth Supplemental National Defense Appropriation Act of 1942, as amended by Section 801 of the Revenue Act of 1942.

(3) The terms "renegotiate" and "renegotiation" have the same meaning as in section 403 (b) of the Sixth Supplemental National Defense Appropriation Act, 1942 as amended.

(4) The term "this contract" means this contract as modified from time to time.

O. Change Title III, by deleting Article III-I, page 24, and inserting the following Article III-I thereof:

**Article III-I—Convict Labor.**

The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor. This provision shall not be construed to prevent the Contractor or any subcontractor hereunder from obtaining any of the supplies, or any component parts or ingredients thereof, to be furnished, under this Contract or any materials or supplies to be used in connection with the performance of this

contract, directly or indirectly, from any Federal, State or territorial prison or prison industry, *Provided*, That such articles, materials or supplies are not produced pursuant to any contract or other arrangement under which prison labor is hired by or employed or used by any private person, firm or corporation.

P. Effective as of the date of this Supplement, change Title III by deleting Article III-O, page 25, and inserting the following new Article III-O in lieu thereof:

[fol. 1541] [Articles] III-O—Disputes.

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact which may arise under this contract and which are not disposed of by mutual agreement, shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail a copy thereof to the Contractor at his address shown herein. Within 30 days from said mailing the Contractor may appeal in writing to the Secretary of War, whose written decision or that of his designated representative or representatives thereof shall be final and conclusive upon the parties hereto. The Secretary of War may, in his discretion, designate an individual, or individuals, other than the Contracting Officer, or a board as his authorized representative to determine appeals under this Article. The Contractor shall be afforded an opportunity to be heard and offer evidence in support of his appeal. The president of the board, from time to time, may divide the board into divisions of one or more members and assign members thereto. A majority of the members of the board or of a division thereof shall constitute a quorum for the transaction of the business of the board or of a division, respectively, and the decision of a majority of the members of the board or of a division shall be deemed to be the decision of the board or of a division as the case may be. If a majority of the members of a division are unable to agree on a decision or if within 30 days after a decision by a division, the board or the president thereof directs that the decision of the division be reviewed by the board, the decision shall be so reviewed, otherwise the decision of a majority of the members of a division shall

become the decision of the board. If a majority of the members of the board is unable to agree upon a decision, the president will promptly submit the appeal to the Under Secretary of War for his decision upon the record. A vacancy in the board or in any division thereof shall not impair the powers or affect the duties of the board or division nor of the remaining members of the board or division, respectively. Any member of the board, or any examiner designated by the president of the board for that purpose, may hold hearings, examine witnesses, receive evidence and report the evidence to the board or to the appropriate division, if the case is pending before a division. Pending decision of a dispute hereunder the Contractor shall diligently proceed with the performance of his contract. Any sum or sums allowed to the Contractor under the provisions of this Article shall be paid by the United States as part of the cost of the articles or work herein contracted for and shall be deemed to be within the contemplation of this contract.

Q. Change Title III by the addition of the following new Article III-W;

#### Article III-W—Modification of Subcontracts or Purchase Orders.

With the approval of the Contracting Officer, the Contractor may modify any subcontract or purchase order (whether now or hereafter in effect) under this Contract to increase the price or fee, as the case may be, or to extend more favorable terms to the Subcontractor.

[fol. 1542] R. Change Title III, by the addition of the following new Article III-X:

#### Article III-X—Notice to Government of Labor Disputes.

Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor will immediately give notice thereof to the Contracting Officer at the plant. Such notice shall include all relevant information with respect to such dispute.

S. Change Title III, by the addition of the following Article III-Y:

**Article III-Y—Disposition of Certain Government-Owned Property.**

It is recognized that property (including without limitation machine tools and processing equipment, manufacturing aids, raw, manufactured scrap and waste materials) title of which is or may be hereafter become vested [ib] the Government, will be used by or will be in the care, custody or possession of the Contractor in connection with his performance of this contract. The Contractor may, with the approval of the Contracting Officer, transfer or otherwise dispose of such Government-owned property to such parties and upon such terms and conditions as the Contracting Officer may approve or ratify. The proceeds of such transfers and dispositions shall be applied in reduction of the cost of the work under his contract.

T. Except as herein modified the terms and conditions of the Contract of December 14 and Supplements Nos. 1, 6 and 7 thereto shall continue in full force and effect and shall apply with equal force to the work added by this Supplemental Contract. All change orders, if any, previously issued in connection with the Contract of December 14 are hereby superseded.

[fol. 1546] The Witness: It does.

Mr. McRoberts: But only those portions beginning on page 11 which add a new article bearing the caption Article 113d, Walsh-[Sealy] Act. And another new article, 3h, on the subject of renegotiation. Another new article, 3i, Convict Labor. Another article, 3-o, Disputes. Another article 3w, Modification of subcontracts or purchase orders. Another article, 3x, Notice to Government of labor disputes. Another article, 3y, Disposition of Certain Government owned property. And the provision on page 8 adding a sentence to one of the articles of the orig-

inal contract. And I direct the Court's particular attention to this Article 3y, Disposition of certain Government [fol. 1547] owned property which reads in part as follows:

"It is recognized that property (including without limitation machine tool and processing equipment, manufacturing aids, raw manufacturing scrap and waste material) title to which is or may hereafter become vested in the Government, will be used by or will be in care, custody or possession of the contractor in connection with his performance of this contract. The contractor may, with the approval of the Contracting Officer, transfer or otherwise dispose of said Government owned property to such parties and upon such terms and conditions as the Contracting Officer may approve or ratify. The proceeds of such transfers and disposition shall be applied in production to the cost of work under this contract."

Q. (Mr. McRoberts) And in that connection I ask you, Mr. Casteel, was the United States Cartridge Company permitted to dispose of any raw materials, [working] process and finished products or any of the machinery, tools, equipment, supplies or anything in that plant—

Mr. Bond: Objected to as calling for a conclusion. This man was not one of the operating officers of the United States Cartridge Company, and it wouldn't be competent from him.

The Witness: I know the reason for the clause.

Mr. Bond: Same objection.

The Court: Overruled.

Q. Tell us the reason for the clause.

[fol. 1548] Mr. Bond: Same objection.

The Court: Overruled.

A. When we first drafted the contract and negotiated with the Government, no one gave much thought to the fact that we would have to sell anything. We realized there would be some scrap brass, but that is about all; No one thought about any material that we would have to

dispose of. However, when we got into actual operation we found there were other things. They went out and bought heavily of tool steel and things of that nature and we found we had surplus amounts and asked that clause. Sale of Government property is covered by strict regulations, and so forth, and we asked for this clause so as to make it clear the United States Cartridge Company did have the right to sell material as described in that clause without consent of the Contracting Officer.

Q. But before you had this clause, what had you done out there, what had you attempted to do in connection with making any such sales?

A. Those that were necessary to make, such as scrap brass, which has to be sold because it would pile up and fill the plant. We had just been selling, but we asked that our rights be more clearly defined by an amendment. But we always got permission of the Contracting Officer before we sold anything.

Q. Did you undertake to sell or dispose of any kind of property without permission of the Government representative?

[fol. 1549] A. We didn't do anything without his permission.

Mr. Bond: Object, that is too general, and a conclusion, and ask that it be stricken.

Mr. McRoberts: Limit that to the property.

A. Well, it was hiring people or anything.

Mr. Bond: I think that is secondary evidence. It is incompetent as to the disposition of the property.

The Court: It will stand subject to the objection.

Q. Tell me the next supplemental agreement that makes any change—

Mr. Bond: May it be understood my objection I made to the contracts go to all these supplements?

The Court: Yes, sir. Take a 5-minute recess.

Thereupon, at 11:38 A. M., July 12, 1946, a brief recess was taken. The proceedings were then resumed as follows:

Mr. Bond: If you Honor please, in connection with extracts in the contract, which have been read by Mr. McRoberts, some by me, I desire to read into the record at this time the following extract from Defendant's Exhibit 20, being the cost plus, the fixed funds contract, and being Title.3 General Provisions, Article 3a:

"Title, Status of the Contractor: It is expressly understood and agreed by the contractor and Government that in the performance of the work provided for in this contract, the contractor is an independent [fol. 1550] contractor and in no wise an agent of the Government."

Q. (Mr. McRoberts). Mr. Casteel, which is the next supplemental agreement that contains provisions of this special character?

A. The next supplement is Supplement 19, dated June 15, 1944. However, it doesn't cover anything, but changes the ammunition order and reduces our fees again and sets the fees of the new cartridges to be made.

Q. Where is the next change in any of the operating terms and conditions of the contract?

A. Supplement 31, which was the next supplement, dated February 10, 1945, also formalizes a group of change orders and adds some ammunition orders and reduces our fees again, and includes a racial-discrimination clause.

(A paper is marked "Defendant's Exhibit 25.")

Q. Mr. Casteel, I show you a document which has been identified as Defendant's Exhibit 25, and ask you if that is a copy of the Supplement No. 31 to which you refer?

A. It is.

Mr. McRoberts: I offer in evidence, if Your Honor please, that part of this exhibit found on page 18 and at the top of page 19, the article bearing the caption, "Article 3-i, Racial Discrimination."

[fol. 1568] (Defendant's Exhibit 25.)

## Article III-V—Racial Discrimination.

W-ORD-491

Supp.31

1. The Contractor, in performing the work required by this Contract, shall not discriminate against any employee or applicant, for employment because of race, creed, color or national origin.
2. The Contractor agrees that the provisions of paragraph 1, above will also be inserted in all of its subcontracts. For the purpose of this Article; a subcontract is defined as any contract entered into by the Contractor with any individual, partnership, association, corporation, [fol. 1569]. estate, or trust, or other business enterprise or other legal entity, for a specific part of the work to be performed in connection with the supplies or services furnished under this Contract; provided, however, that a contract for the furnishing of standard or commercial articles or raw materials shall not be considered as a subcontract.

[fol. 1574] Q. What is the next supplement that has one of these special provisions in it, if any?

A. The last supplement is Supplement 37. That is the next supplement which does nothing but formalize five previous change orders. We are now negotiating on Supplement 38 which is the termination supplement.

Q. Now Mr. Casteel, I will ask you whether or not the United States Cartridge Company at any time ever asserted any title to any of the land, buildings, machinery, equipment, tools, supplies, raw material, working processes or finished products constituting part of, or [manufactures] at, the St. Louis Ordnance Plant?

Mr. Bond: I want to object to that question as leading and suggestive, argumentative, calls for conclusions both of law and fact, calling for matters which cannot be in the

knowledge of a mere general officer of the company with the function of a corporate secretary, and calling for evidence either secondary or hearsay. And if those objections do not seem sufficient to the Court I would like to examine him on the qualification.

The Court: He is not asking him the title, he asked him if he made any claim.

Mr. McRoberts: That is all.

Mr. Bond: There is no situation before the Court whereby a claim could be called for or where there would be any occasion to assert claim. I might ask if you ever asserted title to anything. Why it has never been questioned. Since he seems to go into other matters than documents, could I ask him questions on his qualifications, because I can see it is going to be followed with other questions? I think you can show the relation of the witness—

Mr. McRoberts: I am only offering it to show the interpretation which the parties themselves put upon the contract and the provisions of the contract which say the title would be in the Government. And it is further for the purpose of showing the contractor recognized that provision as being binding and effective.

Mr. Bond: How can title be determined by the attitude?

The Court: He is not trying to establish title, he is trying to establish whether they made any claim of title.

Mr. Bond: I do not think that he can give competent testimony as to whether they ever claimed title; and I think a few questions would bring it out if I could ask them.

The Court: He is Secretary and Counsel.

Mr. Bond: I was going to ask him what his relation to this company was.

The Court: He testified to that earlier.

Mr. Bond: If Your Honor doesn't think it is necessary to inquire into that fact.

The Court: You may go into that.

Qualifying Questions by Mr. Bond:

Q. Just what position did you hold during the period of [fol. 1576] this operation of the plant with the United States Cartridge Company?

A. I started out as assistant secretary and then was made secretary of the company and also Counsel for the company.

Q. That was the corporate office of Assistant Secretary?

A. Yes, sir.

Q. And the duties you had to perform were such duties as a corporate secretary or his assistant ordinarily perform?

A. No, sir, I can't say that, we were a different setup in our ways of doing business in our company. I worked directly with the Olin's who hold the higher offices, and we have five Board members and three are Olin's. I was very active in all these negotiations from the very time the contract was signed up to—well, up to now. I was in on the discussions about the site of the plant, for example. We looked over different sites.

Q. Did you have any duties to perform in connection with production? A. No, sir, not production.

Q. Did you have any duties to perform in reference to accounting?

A. No, sir, but I have been next to the man who did do that. The company had regular department heads for all corporate duties such as accounting department and operating department and various operating functional units, and the plant was run by what we call a general manager.

[fol. 1577] Q. And you as secretary of the corporation had no duties to perform in connection with the operation of the plant or the keeping of its records?

A. Except the corporate records, I keep all those, the minute book.

Q. But you didn't keep the accounting records?

A. No, sir, I kept the stock-book and minute-book, and things of that nature.

Q. Now how were assets carried on the accounts? How many were carried on the accounts?

A. On the accounts we kept, the inventories were kept and so forth.

Q. You were not in contact with those functions at all?

A. Well, I see all the financial statements, and I am familiar with the earnings of the company and that sort of thing. I don't handle the details of accounting.

Q. They had corporate department heads in charge of those functions?

A. There were not any corporate officers at the St. Louis location. There was no man in St. Louis that was a corporate officer, it was handled by a general manager and two assistant general managers, and down the line.

Q. You were a corporate officer?

A. Assistant secretary of the United States Cartridge Company and its local counsel.

[fol. 1578] Q. And corporate officer of the Olin Industries?

A. Corporate officer of the United States Cartridge Company.

The Court: What was your office?

(Brief discussion off the record.)

Mr. Bond: That is all.

Continuation of Direct Examination  
by Mr. McRoberts:

Q. You testified with reference to a paragraph in one of these supplements about the disposition of Government owned property. You testified as to the occasion for the inclusion of that paragraph. Were you in on the negotiation for that change? A. Yes, sir.

Q. And discussion with reference to the Government, as to how the [Goverment] owned property should be disposed of?

A. I was in on all of the amendments to the contract. I handled all of them, saw to the executions and sat in on any conferences that were necessary in working them out with the Army Ordnance Department.

Q. And in the discussion of that particular provision of these contracts about Government owned property, did you or did anybody on behalf of the United States Cartridge Company assert any claim to any of the property referred to in that paragraph?

Mr. Bond: Object as to the conversation because not in [fol. 1579] the presence of any plaintiff in this case, and nothing therein said would be binding on the rights under this statute. And further, for the reason that any discussion about title, there being no issue of title, is irrelevant to the case and has no probative force as to where title was.

The Court: Answer subject to the objection.

A. We at no time made any claim to any of the property.

Mr. McRoberts: I think that is all, Mr. Counsel.

Mr. Bond: That is all, Mr. Casteel.

Mr. Bond: I would like to finish my cross examination of Mr. Miller. He was excused temporarily while we put on the contracts, and I have some of the men whom he testified about, in court, and I would like to have them here.

Mr. McRoberts: I don't care who we proceed with. We had this witness on and withdrew him, and had Mr. Miller on and withdrew him. Mr. Miller is here.

Mr. Bond: I prefer to finish my cross examination of Mr. Miller.

The Court: You may do so.

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### HARRY P. MILLER

previously sworn, recalled for cross examination, testified as follows:

#### Cross Examination by Mr. Bond:

Mr. Bond: Mr. Miller, I wanted in the first place before [fol. 1580] I go into this, there was a matter the other day but I don't think I got that quite clear in the record. Am I correct that the chief engineer was the operating head in charge of the safety department?

A. The chief safety engineer was the head of the [safety] department.

Q. And that through most of this time was Mr. Strickland? Isn't that correct? A. No, sir.

Q. Who was it?

A. Mr. Strickland was the first man. He was in charge up until I think about the spring of 1944. Then he was followed by Mr. McKittrick who was the chief safety engineer until the shut-down of the plant.

Q. Mr. Strickland during all the period of operation up to a date in 1944? A. Yes, sir.

Q. And then Mr. McKittrick succeeded him until the termination of operations? A. That is right.

Q. And what was your relation to those men? Have I got it right? They reported to you as a superior because you had general jurisdiction over the department? Is that it?

A. They were one of the seven departments under my [fol. 1581] jurisdiction. They reported directly to me.

Q. And am I correct that your contact with that department would be with the head, the chief engineer, whoever he might be? A. It was with the whole department.

Q. Did you have any direct contact, for instance with the safety inspectors? A. What do you mean by "direct?"

Q. Did you issue over your signature any verbal or written directions to them? A. No, sir.

Q. Would you single them out and give them any instructions? A. No, sir.

Q. They would get those directions and instructions from superiors in the organization, would they not?

A. Yes, sir, very definitely.

Q. Now, taking up the—I think the first man you mentioned yesterday was Mr. Hirschberger. He worked in the safety department from the 10th of August 1942, until the 8th of July, 1944. Is that correct?

A. That is right, yes, sir.

Q. And what was his first code classification?

A. His first code classification was safety inspector.

Q. And on what date did that commence and how long did it continue?

A. That commenced August 10, 1942. On July 5, 1943, he was classified as safety engineer.

[fol. 1582] Q. How long did that classification continue?

A. On July 12, 1943, he was promoted to assistant staff supervisor.

Q. So his classification as assistant staff supervisor started August 1, 1943, is that correct?

A. It started July 12, 1943.

Q. I would like to show you Plaintiffs' Exhibit A-42 and ask you if what you stated corresponds with what that summary that your company corporation gave me, indicates.

A. This report you have here shows August 1st. That is incorrect, the proper date is July 12, 1943.

Q. You have on your chart I believe—have you got it before you? A. No, sir.

Q. Is there any classification of assistant staff supervisor on your chart there?

A. There are no classifications on the chart at all. All of the names on the chart do not agree with our code classifications.

Q. You mean you have not placed all the code classifications on the chart?

A. There is not any of them on there. We do not make our charts up that way.

Q. You have chief safety engineer, isn't that the code [fol. 1583] classification? A. Yes, sir.

Q. You have an assistant chief safety engineer, isn't that correct? A. That is what this classification is.

Q. You have a staff safety engineer, you have a classification of Staff safety engineer on this card?

A. That is the same as supervising safety engineer.

Q. You told me yesterday that the supervising safety engineer and the foremen were grouped under this safety engineer, three shifts. A. That is right.

Q. Now then, what would be the functions, who would be the staff supervisor? What would be the function of the staff supervisor? A. He was the head of the department.

Q. Would he be Mr. Strickland?

A. That is right, and then Mr. McKittrick.

Q. And the assistant staff supervisor, who would he be assistant to?

A. He would be the assistant chief of the department.

Q. Who would he report to?

A. He would report to the chief.

Q. And would anybody report to him? A. Everybody.

Q. Would the assistant staff supervisor work a shift?

[fol. 1584] A. Everybody works a shift.

Q. I mean would he inspect, patrol and report?

A. No, sir.

Q. What would be his duties?

A. He would be supervising all of the employees in the department except his boss.

Q. Explain what these supervisory duties were?

A. Those supervisory duties were to run the department.

Q. Now then, you mentioned Mr. O'Meara, will you tell me when he entered the safety department and what his first code classification was?

A. He entered the safety department on May 2, 1942, as a safety engineer.

Q. And didn't he enter as safety inspector? A. Yes.

Q. Safety inspector? A. Yes, sir.

Q. Or I believe you stated you used those names interchangeably? A. Yes, sir.

Q. And he continued to be a safety inspector until July 4, 1943? Isn't that correct?

A. No, on 6/19/43 he was promoted to assistant staff supervisor.

Q. Well, I don't understand.

[fol. 1585] (Brief conference between Counsel)

Q. Where there is a discrepancy between the dates you gave me and the date on my Exhibit A, which was prepared under Mr. Kelley's supervision and given to me, is due to the fact that Mr. Kelley gives the date at expiration of the first period where he got the new pay? Is that it?

A. I think that is right, and you will notice that the discrepancy is of a week or less, usually.

Q. Yes, sir.

Q. Whereas, your record just shows where the change occurred in your records, and this is when it was reflected in the pay roll?

A. My record is effective the date for which the management has approved this promotion.

Q. Now then, would Mr. O'Meara's duties have any similarity to Mr. Hirschberger's from that date on?

A. Yes, sir.

Q. I believe you stated Mr. Hirschberger was a direct assistant to Mr. Strickland. Isn't it a fact Mr. O'Meara was further down the line than that? A. Yes, sir, it is.

Q. Just how far down the line was he?

A. Mr. O'Meara, as I testified yesterday, during most of this period after his promotion was in charge of the safety store, laundry, and so forth. He was in charge of the [fol. 1586] second and third sections as shown on that chart.

Q. Now Mr. Kemp, when did he go into the safety department, and what was his first classification?

A. Kemp first entered the safety department on December 23, 1941, as a safety inspector.

Q. And he remained as either an inspector or engineer until when?

A. On June 15, 1942, he was made a supervising safety inspector.

Q. Do you see any such classification as that on Plaintiffs' Exhibit A-33? A. No, I do not.

Q. According to that exhibit he remained either an inspector or an engineer until some date in 1943?

A. He was made assistant staff supervisor. However, you will notice on this sheet that effective June 21, 1942, he was given a fifty dollar increase. That is the time that my final record signed by the management shows he was made a supervising safety inspector.

Q. Now then, after this date in 1943, July 7, 1943, when he became assistant staff supervisor, would that be the same as O'Meara, or what were his duties after that time? Tell me what were his duties after that time?

A. His duties after that time, he was assistant to the chief safety engineer.

[fol. 1587] Q. You would say he was of the same character as Hirschberger then, is that it? A. That is right, yes, sir.

The Court: It is just exactly 12:30, Judge.

Mr. Bond: That is satisfactory to me, Your Honor.

The Court: Announce a recess until 2 o'clock.

Thereupon, at 12:30 P. M., July 12, 1946, a recess was taken until 2 P. M. The proceedings were then resumed as follows:

Mr. Bond: I believe Mr. Miller was on the stand and I was cross examining him.

Q. Mr. Miller, you mentioned Mr. Stockho yesterday. Will you look at your records on him, please? When did he go to work in the safety department?

A. Stockho went to work in the safety department on May 25, 1942.

Q. Prior to that time he had been what is called production inspector trainee? Is that it?

A. Roving inspection—trainee and roving inspector.

Q. And he was on hourly work, and where he worked overtime he was paid at an overtime rate, and where he worked overtime he was paid overtime up to that point? Is that right? A. Yes, sir.

Q. Starting May 31, 1942, he went on a monthly salary of \$175 a month, isn't that correct? A. Yes, sir.

Mr. McRoberts: 25th I believe. Let's see.

[fol. 1588] A. May 25th.

Mr. Bond: Well, the pay period ends May 31st. That is when he got his first pay was it, the end of the pay period?

A. At the end of the week, whatever date that might be.

Q. And he went to work as an inspector, didn't he?

A. That is right.

Q. And he continued as an inspector until, according to my record here, is this correct? "Pay period ending November 7, 1943," when he was given the rating, Foreman, General Assistant?

A. Effective October 25, 1943, he was promoted to supervisor.

Q. Now I notice that from the time he started as a safety inspector on the 31st of May, 1942, for the earlier part of his period as an inspector when he was getting \$175 a month, which according to my [recor] is down to the 22nd of November, 1942, he was not paid any overtime. Is that correct?

A. No. He was paid overtime from May 25, 1942, to November 14, 1942.

Q. Well, will you please look at Plaintiff's Exhibit 12 which gives his monthly salary and his gross wage each week, that week, which shows he worked over 40 hours a week, but he got the regular [groos] wage of \$40.38; not showing any overtime. That is A-12.

A. That is what this shows, yes, sir.

Q. According to Plaintiff's Exhibit A-12 Mr. Stockho did [fol. 1589] not receive any overtime during that period when he was receiving \$175 a month?

A. So far as I can tell from looking at this it doesn't show it; that is right.

Q. You mean it is right that it doesn't show he got any overtime? A. No, I didn't mean that.

Q. It is hard to follow, it is double negative. Did he get overtime salary earning \$175 a month, or didn't he?

A. I say he did.

Q. Does it appear from Plaintiffs' Exhibit 12 that he did? A. Not that I can see.

Q. The fact of the matter is, it appears from Exhibit 12 that he didn't?

A. No, sir, I don't know whether it does or not.

Q. Your company has reported to me the total amount paid each day period with the deductions in the net.

A. I don't know what this represents here. I say that I can't see on here where he was paid overtime, but my record shows that he was paid overtime.

Q. Well, you know that Mr. Kelley prepared this and it purports to show the hours the man worked and the money that he was paid, doesn't it? A. Yes, sir.

Q. That was the purpose of preparing it?

[fol. 1590] A. That is right.

Q. And no overtime appears on this sheet, too?

A. I don't know whether it does or not.

Q. Well, \$175 a month is what is given as his monthly wage, and the gross wage is given \$40.38. That is arrived at by multiplying \$175 by 12, dividing by 52?

A. That is the way we arrive at the correct figure, yes, sir.

Q. And that gives the gross weekly wage, doesn't it?

A. That is right.

Q. And computed that way it wouldn't include any overtime, would it?

A. Not computed that way it wouldn't, no sir.

Q. Mr. Kemp, he was one of that group that you mentioned who at one time became assistant staff supervisor?

A. Yes, sir.

Q. I see he has just come into court, so I will go back to that group and ask you some questions about him. Mr. Kemp according to the record I have—

Mr. McRoberts: Judge Bond, I think you already have cross examined the witness with regard to Mr. Kemp, this morning.

Mr. Bond: Did I? I didn't have him checked here. All right.

Q. Look at the record for Mr. Niedringhaus, will you please? He became a safety inspector—correct me if I am wrong—on the 26th of April, 1942, and continued either [fol. 1591] an inspector or an engineer until November 11, 1943, or about that. Is that right?

A. He was employed on April 20, 1942, as a safety inspector. He was classified on April 5, 1943, as a safety engineer and continued in that capacity until October 25, 1943, when he was promoted to supervisor.

Q. Does that mean supervisor over the other two engineers in his shift? A. That is right.

Q. And did he continue in that classification?

\* A. He continued in that classification until May 3, 1944, when he was terminated for military service. He was reinstated on May 15, 1944, as secretary of the Safety Committee.

Q. What was that last date? A. May 15, 1944.

Q. Secretary of the Committee? A. Yes, sir.

Q. Go ahead.

A. And he continued until his termination.

Q. Did the company send him to school at Chicago?

A. Yes, sir.

Q. When?

A. He took a complete explosive training course on the safety and security division of the Ordnance Department.

Q. When? A. I don't know when.

[fol. 1592] Q. Wasn't it towards the end of his employment? A. Yes, sir.

Q. When he came back what did you put him doing?

A. I can't tell you that because I don't know when he came back.

Q. Wasn't he put in the laundry to do some checking routine work in there? A. That is possible.

Q. Mr. Stutz, when did he enter the department? And in what capacity?

A. He was hired on June 7, 1943, as an assistant staff supervisor of the safety department and continued in that capacity until his termination.

Q. To what duty was he assigned?

A. Supervisory duties as an assistant to the chief safety engineer.

Q. Could you tell me where he was doing those duties and what they consisted of?

A. Particularly, he was in charge of the safety educational unit, optometrist's office.

Q. Wasn't he in the laundry?

A. I don't think so. I can clarify that a little, I think. He had supervision over the uniform cribs as well as the Medical Placement Unit, Safety Clerical Unit, Educational Unit, and other miscellaneous work.

[fol. 1593] Q. He wore a uniform? A. Oh, yes, sir.

Q. And he did routine work, did he not?

A. No, he didn't.

Q. He never worked in the production unit, did he?

A. No, he didn't.

Q. Mr. Trimble, according to my record, he went to work on March 23, 1942, as an instructor in First Aid. Was that his first job in the safety department?

A. He was employed on March 25, 1942, as a first aid instructor.

Q. And he continued in that classification until when?

A. He was reclassified as a safety engineer on March 29, 1943, and continued in that classification until his termination.

Q. Prior to the time he became a safety engineer but was an instructor in first aid, what were those duties as instructor first aid?

A. His duties were to teach and to train first aid.

Q. Did he have a class like a school teacher?

A. He had a class in the class-room, and he had all

classes of employees: foremen, supervisors of production and maintenance, and he had guards and firemen.

Q. What subjects did he teach?

A. Principally first aid. He taught some other classes [fol. 1594] but most of his work was first-aid work.

Q. And when he left that work and went back to be a safety engineer, he then performed duties which have been testified to in reference to other safety engineers?

A. No, sir, he didn't leave that work.

Q. I misunderstood you, I thought you said on a certain date he went back to be a safety engineer?

A. No, sir, he was reclassified on the 29th of March, 1943, as a safety engineer and continued as an instructor.

Q. And he continued to do the same work he had before?

A. That is right, and was an instructor during the entire time he was employed.

Q. He never patrolled, inspected or reported then?

A. That is right.

Q. His sole duty consisted in holding classes teaching the subject you mentioned?

A. That is true. There might have been every three or four or six months where he did such work, I don't know, but he was never assigned to that function.

Q. Now Mr. Champion, you mentioned him, I believe. Would you turn to his record? Let me know--well, suppose you tell me what he started out at and how long he continued?

A. He was employed on April 21, 1942, as a safety inspector. He worked principally in the .50 calibre tool and [fol. 1595] gauge building with most of his assignments being in transportation, traffic.

Q. And he continued as an inspector or engineer until he became assistant staff supervisor? Is that it?

A. On 9/11/43 he became assistant staff supervisor.

Q. And he remained there until his termination in 1944?

A. That is right, yes, sir.

Q. Now after he became assistant staff supervisor, what were his duties? Do your records show?

A. Yes, sir, he worked for about one month, a little less than a month, under the chief safety engineer and was then transferred to the production control department, still as

an assistant staff supervisor, and worked for that department until he was terminated.

Q. In what classification? Would he patrol, inspect and report? A. No, he wouldn't.

Q. He would act as a sort of go-between, I suppose, between Mr. Strickland and the subordinates in the department?

A. No, he was working for the production control department as an assistant to the head of the department.

Q. The head of the production control department?

A. That is right, yes, sir.

Q. His duties, though, were in connection with safety, [fol. 1596] were they not? A. Principally, yes, sir.

Q. Mr. Reeves, tell us about Mr. Reeves, will you please?

A. Mr. Reeves was employed as a guard and worked on that job until the 8th of June, 1942, when he was made a safety inspector. On January 25, 1943, he was classified as a safety engineer, and on November 1, 1943, became a supervising safety engineer.

Q. That last date was what?

A. 11/1/43. Now that continued until he was terminated on March 31, 1944. Then he was rehired on April 17, 1944, and worked in the repair depot as a supervisor.

Q. What was he put to work at after that change, after he was classified as a supervisor?

A. He was made the supervising safety engineer in a 30 calibre production unit, building 102.

Q. Wasn't he put to work doing draftsman's work?

A. No, sir.

Q. Are you sure?

A. I am quite sure. I have no record of it at all.

Q. You have no record of it? A. That is right.

Q. Well, then, you don't know what he was put to doing? [fol. 1597] A. I know that he was not put to work doing draftsman's work for the safety department.

Q. He was made a supervisor?

A. He was made a supervising safety engineer of production, Building 102, a 30 calibre building.

Q. And you don't have a thing on your record to show what he actually did there? A. No, sir.

Q. What?

A. I have a letter signed by the chief safety engineer

dated November 28, 1944, which says: "An audit was made of Building 102 by Mr. Ben Ludwig accompanied by Mr. Joe Reeves, safety supervisor of the building."

Q. Oh, I see, I have been saying "draftsman", that is where I made an error. He was put to work of an auditing nature?

A. No, sir; he was put to work as supervising safety engineer in charge of the building.

Q. He actually got up audits, didn't he?

A. Well, they all do safety audits.

Q. Look at your record on Mr. Yancey. In fact, Mr. Miller, all this testimony you are giving about these men's classifications and their duties is from your records, isn't it? A. That is right, yes, sir.

Q. Mr. Yancey, tell us about him.

A. Mr. Yancey was hired as an adjuster trainee July 3, [fol. 1598] 1942, and went to a training school. On July 17, 1942, he was transferred to a plant in the fire department. On December 11, 1942, he was transferred to safety engineer.

Q. That is the first time he entered the safety department?

A. No, sir; he was in the safety department as a fireman.

Q. Up to that time was he paid on an hourly basis?

A. Yes, sir.

Q. Now then, he started on a monthly basis at this last date you mentioned in 1942? A. December 11, 1942.

Q. As a safety engineer? A. That is right, yes, sir.

Q. Go ahead.

A. Then he was reclassified on October 10th, 1943, as fire inspector, and at that time they made an adjustment in his salary because it was found that he should have been classified as a fire inspector some months previously. So he was paid retroactive wages for the difference.

Q. What did he have to do as fire inspector?

A. He had to investigate and patrol all of the buildings and also attend and be present at fires and make investigations and recommendations for the prevention or recurrence of any fires, fire hazards, and so forth.

Q. Go ahead with the record on him.

A. On November 1, 1943, he was promoted to supervisor, [fol. 1599] supervising safety engineer in a 30 calibre

production building, 202, and was later transferred to Building 103, and when the whole building was transferred. That continued until his termination.

Q. Tell us about Mr. Hargate, will you please?

A. Mr. Hargate was employed on January 13, 1942, as a warehouse man on an hourly rate. He continued on the hourly rate until May 18, 1942, when he was made a safety inspector. He continued on that during the entire time of his employment.

Mr. McRoberts: Mr. Miller, let me call your attention to March 12, 1945. Was there a change at that date?

A. Yes, sir, on March 12, 1945, he was transferred to the production control department as a supervisor.

Q. (Mr. Bond) And he was terminated about six months after that? When was he terminated? A. 9/15/'45.

Q. He only held that position as supervisor for the last six months, or about that?

A. That is right, yes, sir. He also served at Tyson Powder Storage-area as a safety engineer from October 1, 1943, until February, 1945.

Mr. Bond: I think that is all.

#### Redirect Examination by Mr. McRoberts:

Q. Mr. Miller, in the testimony yesterday, I believe you referred to someone being on a certain code No. 843, the code of the safety engineers. They were actually performing other duties than an ordinary safety engineer or safety inspector performed? A. Yes, sir.

Q. Will you tell us how that happened?

A. Well there were a number of those. For instance, this man Trimble who was an instructor, Trimble was hired as a first aid instructor and a very short time after he was employed his classification was changed to safety engineer due to the fact that as an instructor Trimble had to keep himself just as well posted on the rules and regulations and requirements as all of the safety engineers. In fact, he was teaching it. For instance, Trimble was given this explosive training course just the same as the safety engineers were. For that reason he was classified as a safety engineer. He didn't have an assigned post in any unit.

Q. Mr. Miller, let me phrase the question this way: These code classification numbers were primarily pay roll numbers, were they not? A. That is what they were.

Q. And each code number carried a certain salary with it? A. That is right.

Q. Sometimes you had jobs or duties which varied a little bit from the job ordinarily under a particular code?

A. Yes, sir.

Q. But had no special code number for those jobs?

A. That is right, yes, sir.

[fol. 1601] Q. So if they were entitled to the salary of code 843, for example, you paid them under that code?

A. We applied the code that came the nearest to the actual function that they were performing.

Q. So that you may find people listed on Defendant's Exhibit A carrying the same code—Plaintiffs' Exhibit A—carrying the same code number, but whose duties varied from person to person? A. That is right, yes, sir.

Q. Now this may be [repetitious], but to clarify that, Mr. Miller, Judge Bond yesterday asked you a number of questions regarding the authority which the production people had over safety matters as set forth in certain instructions and asked you if that didn't conflict with your testimony as to the authority of the safety engineers in the department? A. Yes, sir.

Q. Now you testified on direct examination in response to my request that the safety department was set up as a staff advisory department. I believe that is the term.

Mr. Bond: Object. That is a suggestion to the witness and [and] leading form of question.

Mr. McRoberts: It is purely preliminary, Your Honor. I am leading up to a particular thing.

Q. I believe you so testified in substance? A. Yes, sir.  
[fol. 1602] Q. Now will you explain the relationship between a staff advisory function and a line or a production function?

Mr. Bond: That has all been over. He took him over it in chief and I took him over it in cross examination. It is just starting over again, if the Court please.

The Court: He may answer.

A. A line function in our organization is the operating function. A line manufacturing or operating department would be controlled by the immediate supervisor of these employees, and we were very strict about this rule that any matter pertaining to that department or these employees; or the machinery, working conditions, material, the product in the department, had to be handled through the supervisor of that department. And it was necessary that we be so strict principally because of the size and magnitude of the operations we were carrying on. The staff function, what we call a staff function, is the function of instructing, teaching, training, recommending. And the staff function requires that whoever is performing that from a staff standpoint must perform it through the line supervision always, except in cases of emergency.

Q. And when you use the term that the safety department was a staff advisory department, you mean by that what you just testified to? A. That is right, yes, sir.

Q. And the exception was in the event of emergency?  
[fol. 1603] A. That is true.

Q. When the safety department could act directly upon the operation? A. That is right.

Q. Now Mr. Miller, referring to these assistant staff supervisors. I think I covered this in part, but I want to make certain. Did I understand your statement they spend all or substantially all of their time in supervisory functions, or did they spend any substantial part of their time doing the work, or employees under them?

Mr. Bond: I don't think Counsel ought to continue to use that form of interrogation of his witness. I am sure he knows it is not proper. He could just as easily ask him what functions they perform. And I object to it.

The Court. Go ahead.

A. I would say the assistant staff supervisors and those others.

Q. By "others" will you identify it by exact name?

A. Well, the assistant staff supervisors, the supervising safety engineer, and any supervisor, spent at least 90 or 95 per cent of his time supervising.

Q. As distinguished from?

A. As distinguished from doing any manual work similar to those employees under his supervision. And about the only function they would perform, not of a supervisory [fol. 1604] nature, would be the signing of correspondence, reports, and so forth.

Q. I will ask you whether or not these supervisory officers of the different classes to which you have testified would be required to exercise discretionary powers in the performance of their duties?

Mr. Bond: Just a minute. Object to that, it is calling for a legal conclusion. This is one of the questions we are trying, whether they would be required to exercise discretionary powers.

(Last preceding question was read.)

The Court: Objection sustained.

Mr. McRoberts: Your Honor please, may I suggest this is a witness who is in charge of these employees and knows that that is an ultimate fact.

The Court: He can tell what they did.

Mr. Bond: Yes, sir.

Q. Will you tell us what those supervisors did and were required to do in the performance of their duties, directing your particular attention to any matters involving judgment or discretion, if there were any.

Mr. Bond: We went over all that in chief. That was the main thing he brought out from him yesterday.

The Court: I thought it had been gone over.

A. I think that the assistant staff supervisor supervising the safety engineer, and the safety engineer, were required to use their own judgment and to use their own [fol. 1605] discretion constantly. You cannot at any time lay down a rule, for instance, and say that a half inch of water on the floor was a hazard and you have to stop the operation, but less than a half inch is not a hazard, the safety engineer had to use his own judgment. He had to decide for himself when a hazard existed. He had to decide when to shut down a machine. He had to decide

when to recommend a new type of guard, or whether to recommend a new type of guard. He had to decide when he was going to ask his supervisor to help him get the line supervision to enforce safety regulations and safety requirements. The biggest part of his job was making decisions for himself.

Q. I think I asked you, but I may have asked you the question with reference to only specific jobs. Were the suggestions and recommendations of all of those parties about whom you have testified given weight and consideration, particularly those recommendations with respect to hiring, firing, promotion and demotion; transfers and disciplines, and matters of that kind?

Mr. Bond: Objected to as leading.

The Court: He may answer.

A. They were not only given that, but the records signed by those complainants will show that actual results were achieved as a result of the recommendations by them in discharges, transfers of employees, putting them on lighter work, changing their classification, and all things pertaining to that.

[fol. 1606] Q. And now one question which I hope is final. You directed my attention to some records which you had of a specific instance signed by one of these plaintiffs. Do you have in your possession and as part of the records of your department a report prepared by the plaintiff E. C. Maher, dated June 30, 1943, which illustrates the function and purpose in the conducting of these safety meetings and the authority which the employees were given?

A. Yes, sir.

Q. Will you just read, Mr. Miller, into the record the particular report and show by whom it was made, to whom it was made, and which of these plaintiffs received copies of it?

Mr. Bond: May I see it first, please?

(The paper is passed to plaintiffs' counsel, who inspects and returns it to witness)

Q. Proceed.

A. A letter signed by Mr. E. C. Maher, dated June 30, 1943, addressed to Mr. C. E. Strickland:

"Minutes of semimonthly supervisory meeting held June 25, 1943: Supervisor at Station 763 requested an electric fan. Mr. Lockhart requested first aid training for 22 fireman stationed at the [power] storage area."

Q. Is that one of the plaintiffs in the case, Mr. Lockhart?

A. Yes, sir.

"It was brought to our attention that, although the [fol. 1607] electric fans are properly guarded were still being placed on box which has bandages, and so forth. Supervisors were asked to have the safety engineers check all fans to eliminate any hazardous condition. Mr. Stewart asked what authority a safety engineer had in shutting down a machine. It was explained that all safety engineers had absolute authority to shut down any machine where a hazardous condition existed."

E. C. MAHER."

Copies sent to J. T. McKittrick, Mr. A. Brooks, Mr. Ludwig.

Q. Mr. Ludwig, one of the plaintiffs?

A. Yes, sir. And Mr. Stockho.

Q. One of the plaintiffs?

A. Yes, sir. Mr. Knight, one of the plaintiffs, Mr. J. McDermott, Mr. A. Lockhart, a plaintiff, and Mr. R. Stewart a plaintiff.

Mr. McRoberts: I think that is all.

#### Cross Examination by Mr. Bond:

Q. The last sentence or two that you read in reference to the right of a safety engineer to shut down a machine comes under those exceptions in the general instructions which I showed you yesterday where it says, an exception to this rule, the rule being that they cannot do that.

"An exception to this rule will be made where an employee is engaged in some operation whereby death or serious injury might result."

That is correct, isn't it?

[fol. 1608] A. I would have to see that.

Q. You have been shown that several times both by your Counsel and by me, "Book of General Instructions," under the heading, "Duties of Safety Engineers shall be as follows," page 6, Item 6, says they shall not have that authority, and what I just read states the exception. That instruction given at that meeting, I am asking you, was under that heading, wasn't it?

A. Item 6 does not say they shall not have that authority. The last paragraph reads, "they shall have that authority."

Q. Item 6 doesn't say that?

A. No, sir, Item 6 doesn't say anything about that.

Q. "The safety engineer will not attempt any correction of these violations by contacting the individual."

A. Yes, sir.

Q. "In all cases he will contact the supervisor of the individual." A. Yes, sir.

Q. "And will leave corrective action"— A. Yes, sir.

Q. "To the supervisor." A. Yes, sir.

Q. Corrective action would include the shutting down of the machinery, wouldn't it? A. Yes, sir.

Q. Now, down here you say, "An exception to this rule [fol. 1609] will be made where an employee is engaged in some operation whereby death or serious injury may result." A. That is the same as this.

Q. In other words, he would act in emergency?

A. Absolutely.

Q. Clyde Strickland, who was the head of this department most of the time, will be brought here as a witness?

A. I don't know.

Mr. McRoberts: I will answer that question if you wish to direct it to me.

Mr. Bond: Well, are you going to call Mr. Strickland as a witness?

Mr. McRoberts: I am not. Mr. Strickland is not in town and not in this jurisdiction as far as I know.

Mr. Bond: That is all.

WALTER L. SCHULTE,  
previously sworn, recalled for further redirect examination on behalf of defendants, testified as follows:

Redirect Examination by Mr. McRoberts:

Q. Mr. Schulte, you have been sworn and been on the witness stand before, have you not? A. Yes, sir.

Q. Mr. Schulte, at my request have you produced in court the original ledger of the United States Cartridge [fol. 1610] Company? A. I have.

Q. And have that in your possession now? A. I do.

Q. That is the original book entry of the company kept in the ordinary course of business, and does that ledger reflect the assets and liabilities of the United States Cartridge Company from the beginning of its operations down to the present time? A. Yes, sir.

Q. Without attempting, if it is necessary, to offer the entire ledger in evidence, can you point out to me any sheets in that ledger which contain any listed assets of the United States Cartridge Company or any fixed assets of any kind or character?

A. Yes, sir, I can show one ledger sheet.

Q. All right.

Mr. Bond: I think it is going pretty far into collateral matters to go into the assets of the United States Cartridge Company in this action for overtime under the Fair Labor Standards Act. I do object to all those matters as being purely extraneous, having no bearing on the issues in this case.

Mr. McRoberts: I hoped it wouldn't be necessary to go into the record. It is to prove the United States Cartridge Company didn't have title and does not claim to have title to this property in question.

[fol. 1611] Mr. Bond: I am submitting to Your Honor whether they have title or not, or what they have title to, is not a subject of inquiry in this case.

Mr. McRoberts: May I suggest—this is subject to your objection that it isn't relevant and material—that the fact is that the title to his property was in the United States Government and wasn't in the United States Cartridge Company.

Mr. Bond: No, I am in no position to make any stipulation about the ownership of any of the defendant's property, or his title.

The Court: It will be admitted, then, subject to the objection.

Q. Now you said you found one sheet in that ledger that shows some type of fixed asset? A. Yes, sir.

Q. What do you mean by "fixed assets?"

A. Items of a tangible nature.

Q. Do you have that ledger sheet before you? A. I do.

Q. That being Account No. 401? A. That is correct.

Q. Bearing the caption "Office Equipment?"

A. That is correct.

Q. And how many entries are there on that sheet?

A. One.

[fol. 1612] Q. And what does that represent?

A. The purchase of a check writer and signer from the War Assets Administration.

Q. When was that purchased? A. June 30, 1946.

Q. Now are you familiar from your control of these records of that company, was this ledger sheet kept under your direction and supervision? A. Yes, sir.

Q. Can you state of your own knowledge as to whether or not the United States Cartridge Company now owns or at any time in its operation owned any fixed assets other than this one item which you have directed to my attention?

Mr. Bond: Objected to as calling for a conclusion, legal and factual.

The Court: He may answer.

A. The United States Cartridge Company didn't own any fixed assets other than I have testified to.

Q. Just one machine?

A. Just one piece of office equipment.

Q. Now your balance sheets of the company were taken off from time to time from this ledger? A. Yes, sir.

Q. Do you have copies of these here? A. I do.

[fol. 1613] Q. Without going into detail on that, do any of them show any fixed assets other than this one item to which you have directed my attention? A. No, sir.

Q. That is true all the way back to the beginning of operations of the company? A. That is true.

Q. Mr. Schulte, when the company ceased actual manufacturing operations at the St. Louis Ordnance Plant, what was done with respect to all physical property on hand? I am referring both to machinery, tools, appliances, raw materials, supplies, working processes, and ammunition, if any?

A. It was turned over to the Ordnance Department.

Q. Did you obtain a receipt and release from the Government for all property on hand? A. We did.

Q. Did the Government pay you for that?

A. The Government paid for all of the property.

Q. I mean when you turned that over to them, did they give you any money for it? A. No, sir.

Q. Why not?

A. Because it had already been paid for by the Government.

Q. When any property was received at that plant, any raw material such as brass, using that as an example, when it was received [it] at the plant, who checked it in? [fol. 1614] A. Our man checked it in along with a Government inspector.

Q. And were records kept of that property all the way through? A. They were.

Q. And whose records were those?

A. The Government's.

Q. Did the United States Cartridge Company ever keep any records of its own of raw materials, or working processes or the finished products? A. No, sir.

Mr. McRoberts: I think that is all, Mr. Schulte.

Mr. Bond: No cross examination.

R. L. JACOBSON,

of lawful age, produced, sworn and examined on behalf of defendant, testified as follows:

Direct Examination by Mr. McRoberts:

Q. Will you state your name, please sir?

A. R. F. Jacobson.

Q. Where do you live?

A. 1125 Edward Terrace, Richmond Heights.

Q. Where are you employed?

A. McQuay-Norris Manufacturing Company.

Q. When did you enter their employment?

A. September 10, 1945.

[fol. 1615] Q. And before that time by whom were you employed? A. By the United States Government.

Q. And in what capacity?

A. As United States Federal Auditor at the St. Louis Ordnance Plant.

Q. And how long were you engaged in that work?

A. From September 2, 1941, to September 7, 1945.

Q. That is the entire period of the operation of the St. Louis Ordnance Plant?

A. It covered the operation before they started and after they finished.

Q. What were your duties?

A. My duties mainly were to determine all costs incurred at the plant or reimbursed at the end of the contract, and to see that the Government property at the plant was properly used and Government materials were not wasted, to set up auditing controls, to see the contractor under the operation performed it according to the contract.

Q. Did you set up controls and records for the keeping of records of physical property, both machinery, tools, equipment, raw materials, working processes and finished processes?

A. Under Government regulations we maintained actual fixed records, of what we call fixed assets. We kept item records.

Q. You checked each machine? Is that true?

A. We checked each machine and listed and saw the serial number and category, and what type, and grouped [fol. 1616] those to show the record of each machine.

Q. That is, the Government did that?

A. The Government did that under my supervision.

Q. Did the Government have its own stamp or tag put on each machine?

A. The Government regulation required the United States Cartridge Company to put a tag on the minute the

property was received at the plant, which read "St. Louis Ordnance Plant Property No."

Q. And the tag said "St. Louis Ordnance Plant," and gave a separate number to each machine?

A. Which identified them as a piece of property.

Q. And those identifying numbers went on to the Government records? A. Yes, sir.

Q. Is that true of every machine in that entire plant?

A. Yes, sir.

Q. Every desk?

A. Every piece of equipment which is known as capital equipment. It would cover almost every item costing \$50 or more.

Q. And can you state of your own knowledge and from your knowledge which you gained in keeping those records and supervising those records, and your functions as an employee of the Government, who owned the plant itself and its equipment?

[fol. 1617] Mr. Bond: Object to that as hearsay, and not the best evidence.

The Court: He may answer subject to the objection.

A. The Government went on the principle of a certain program of Government owned and controlled operating plants, and they were referred to as GOCUL.

Q. This was nothing unique, was it?

A. No, sir, it was one of the many that covered all these types of plants that were contractor operated.

Q. Is that also true not only of machinery and equipment, but of raw materials and working processes and finished product?

Mr. Bond: Object as not the best evidence and hearsay. He is asking this field auditor who kept books for the Government as to the title of the raw materials.

Mr. McRoberts: This is the man who kept the books showing the Government ownership of the very property.

The Court: He may answer.

Mr. Bond: We except.

A. Did I understand whether that was Government property or not?

Q. Yes, sir.

A: Yes, sir, we presumed it to be Government property and put a check on it.

Q. All raw materials were checked in either completely or spot checked? A. Yes, sir.

[fol. 1618] Q. How about anything that went out, for example? A. It had to go out with our permission.

Q. If a truckload of brass was to go out of the plant as being unsatisfactory or going some place else?

A. A report had to be given to the Government so we could check it out.

Mr. McRoberts: I think that is all.

Mr. Bond: No cross examination.

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JOHN C. McDERMOTT,

of lawful age, produced, sworn and examined, testified on behalf of defendant as follows:

Direct Examination by John L. Donnell:

Q. Will you please state your full name?

A. John Thomas McDermott.

Q. What is your address?

A. 3728 Avondale Avenue; Pine Lawn.

Q. What is your age? A. Thirty-two.

Q. Were you employed by the United States Cartridge Company during the war? A. I was.

Q. When did you enter their employment?

A. July 22, 1941.

[fol. 1619] Q. In what position or positions were you employed by this company?

A. My original employment, my original job title was First Aid Instructor. My title was then changed to safety inspector.

Q. Will you please indicate at what time the changes in your positions occurred?

A. I can't state that definitely. Several months after my employment my title was changed to safety inspector, then to safety engineer, then to supervising safety engineer. And my last job title was assistant general foreman.

Q. In your work as safety engineer did you have the duty of instructing other safety engineers in safety practices? A. I did.

Q. What training did you have in safety practices?

A. I received 96 hours' instruction in industrial safety engineering at Washington University, and 300 hours' instruction in explosive safety engineering at Chicago, Illinois, Institute of Technology. That course was given by the Ordnance Department.

Q. Was that course given before or after your employment at the Cartridge Company? A. During.

Q. Will you please state if you instructed any of the plaintiffs in this case in safety engineering?

[fol. 1620] A. May I see the list?

Q. And may I also ask you if you did instruct any of the plaintiffs in this case, will you state which ones? Or if you didn't instruct them, you could exclude the ones you didn't instruct.

A. Excluding the ones I didn't instruct, Mr. Champion.

Q. These are the ones you didn't instruct?

A. That I didn't. Mr. Kemp, Mr. Maher, Mr. Stutz, Mr. Yancey, Mr. Broad, and Mr. Peters.

Q. Did you instruct all of the remaining plaintiffs in safety engineering?

A. To the best of my knowledge, yes, sir. There may be one or two others that are excepted.

Q. What was the length of the training course which you gave these plaintiffs?

A. The first aid training for most was the regular standard first aid course; that is, the Red Cross standard course, which requires 20 hours instruction. The instructions in Safety would cover approximately 16 hours.

Q. Did you give them these instructions before they started to work or after they had started to work?

A. After.

Q. And would it be early in the period of their work as safety engineers?

A. In some cases it might have been immediately after [fol. 1621] employment, and others some time may have elapsed.

Q. What is the method of instruction in those courses?

A. Regular class-room instruction, the use of visual aid such as slide films, motion pictures, manuals, bulletins and data sheets.

Q. How large were those classes?

A. They would vary, sometimes there might not be more than three or four persons.

Q. At what time in the day would they be given?

A. At different times.

Q. Did you use any text-books in those courses?

A. Manuals were prepared for use in these courses.

Q. Who prepared the manuals? A. I did.

Q. Will you please state which manuals these were?

A. What?

Q. Will you state the manuals you used? A. By name?

Q. Yes, sir.

A. One was the Manual of General Instructions for Safety Engineers.

Q. Mr. McDermott, is Plaintiffs' Exhibit F which I hand you here that manual to which you refer?

A. It is. I might add that this manual was revised, the revision being only that the words safety engineer replaced [fol. 1622] the words safety inspector, which was used in the original publication of this manual.

Q. When did that revision occur?

A. I don't recall the exact date. It was when the title itself was changed, that is, after that time.

Q. Did you prepare any other manuals for use for these training courses?

A. Yes, sir; there were data sheets prepared, there was a manual, Safety Manual for Supervisors, which was issued. This manual which you are holding—

Q. Just a moment. Is Defendant's Exhibit 1 this safety manual for supervisors to which you refer?

A. Yes, sir, but this manual wasn't used in my classes. This manual was published after these classes were held.

Q. You prepared that manual? A. I did.

Q. It wasn't used in your classes? A. No, sir.

Q. Did you, however, in your classes cover the material that is covered in that manual?

A. For the most part, yes, sir.

Q. Did you or didn't you instruct these men explicitly as to their duties as safety engineers?

A. The instructions were given as are explicitly contained in the manual.  
[fol. 1623]

Q. As to the duties of the safety engineers?

A. That is correct.

Q. Will you give a brief statement as to what instructions you gave to these men as their duties as safety engineers?

A. The instructions as to making routine inspection reports of accidents, the writing of accident reports, and so forth.

Q. Did you or did you not instruct these men that they had authority to stop production?

Mr. Bond: Just a moment. Object to Counsel leading the witness or making suggestions as to his testimony.

The Court: Sustained.

Q. Did you instruct them as to any other duties which they had?

A. The men were instructed that in the ordinary course of events where infractions were noted, or any hazardous physical or mechanical conditions were noted, that the supervisors of the area of the building in which this condition was found should be contacted for corrective action; but where death or serious injury was imminent that the authority was had by the safety engineer to stop the production himself.

Q. I call your attention, Mr. McDermott, to the general instructions which you say you prepared and which you referred to and identified as Plaintiffs' Exhibit F. And I [fol. 1624] should like to read into the record two portions of this exhibit. One appears on page 2, at least the second page, it doesn't happen to be numbered, about three-quarters of the way from the bottom:

"Should not violations exist during the working shift, a report of such conditions will be made in the manner as is outlined above. Consult sample report which is included in this manual. An exception to this rule will be made where an employee is engaged in some operation whereby death or serious injury may result. Should this condition exist the safety

engineer will stop the hazardous operation and will immediately seek the supervisor of the person who was performing such act and will report the incident to him and will explain in detail why he caused such operation to be stopped."

This is the instruction to which you refer in stating that you informed these men that they had authority?

Mr. Bond: Don't lead the witness.

Q. Is this the provision to which you referred one moment ago in explaining what authority you stated to the men they possessed?

Mr. Bond: He didn't refer to any provision, Your Honor.

Q. You did instruct the men in this provision which I just read? A. That is true.

Q. Referring also to this manual further, at the bottom [fol. 1625] of the sixth page thereof, I read into the record this—or at the bottom of the seventh page, this provision:

"When a safety engineer discovers what he considers to be the existence of an extremely hazardous condition, he is authorized to take immediate direct action to eliminate the [the] hazard. An unsafe condition in the restricted areas will also fall under this category. The safety engineer will use discretion in the exercise of this authority so that there will be no unnecessary interruption of production. A report of the circumstances and of the action taken will be promptly made to the foreman or supervisor in charge. Cases of this type will also be reported on Form I. R. S. 25—Revision 243."

Did you call this provision to the attention of your men in those classes? A. I did.

Mr. Donnell: I believe that is all.

#### Cross Examination by Mr. Bond:

Q. Mr. McDermott, you said your name is John, what is your full name? A. John James McDermott.

Q. Where do you live?

A. 3728 Avondale Avenue, St. Louis, County, Missouri.

Q. How old are you? A. Thirty-two.

[fol. 1626] Q. Married or single? A. I am married.

Q. When did you go to work for the St. Louis Ordnance plant? A. July 22, 1941.

Q. In what capacity?

A. My first job was as First Aid Instructor.

Q. Prior to that time you said something about having attended Washington University one year, didn't you?

Mr. Donnell: I beg your pardon, he didn't say he attended Washington University prior to that time, he said he attended it concurrently with.

Q. Oh, 1941? When did you attend Washington University? A: It was during 1943, sir.

Q. 1943, and what department of the University did you enter?

A. The course that I took was one of those war training courses in industrial safety engineering.

Q. When did you enter Washington University, and who was your instructor out there?

A. There were a number of instructors.

Q. When did you enter the university?

A. I don't remember the exact date.

Q. What class did you sign up for?

A. This Industrial Safety Engineering class.

[fol. 1627] Q. Were you enrolled as a regular student of Washington University? A. No, sir.

Q. You won't appear on the records as a student?

A. The certificate is issued for Washington University.

Q. I asked you if you enrolled as a student in the Registrar's Office like any other student in the university.

A. I filled out a form which was sent in. I don't know whether it was a regular form used by Washington University or not.

Q. Did you go out there yourself and apply?

Mr. Donnell: Object to that line of testimony. He stated he attended this course at Washington University.

Mr. Bond: I want to know when the courses were held. When were those courses held?

A. It was some time during 1943.

Q. Was it in the winter?

A. I don't recollect. I believe that it was, yes, sir.

Q. Fall or spring?

A. I believe it was during the winter months, I don't know.

Q. Who was the instructor?

Mr. Donnell: Maybe that will refresh your recollection (passing a paper to witness).

Mr. Bond: I wish he wouldn't interrupt my cross examination by handing witness papers, Your Honor.

[fol. 1628] Mr. Donnell: All right, I will retain it.

Q. Who was your instructor? Give me his name.

A. There were several instructors. One was Mr. Johnson, who is a representative of, and the safety engineer, for the American Optical Company here in St. Louis; Mr. Ben Cornwell—I can't tell you who Mr. Cornwell is with. I think it is Insurers' Service Company, or something of that sort.

The Court: Why take up this time?

Q. You first went to work as a first aid instructor?

A. Yes, sir.

Q. And you instructed safety engineers in first aid? Is that right? A. I did.

Q. Now this manual of mine that you were handed here, did you prepare that manual? A. I did.

Q. All that writing that is in that manual? A. I did.

Q. You composed it?

A. No, sir, some parts of it were put together by me.

Q. But you are not author of this language in this manual, are you? A. To a certain extent, yes, sir.

Q. These general instructions, did you draft them?

A. Yes. Here is the manner in which the manuals were [fol. 1629] compiled: The manuals would be compiled by me or written by me, and then [submitted] to my superior, that is the chief safety engineer. And they would be approved by him and then would be published.

Q. I see.

A. This and my Exhibit F were published by the chief safety engineer. It was compiled by me.

Q. All these forms, did you compose them? A. No, sir.

Q. What do you do now?

A. At the present time I am unemployed.

Q. Ever since last Monday you have been sitting in this court-room, haven't you? A. That is correct.

Q. Were you subpoenaed as a witness by anybody in this case? A. I wasn't.

Q. How did you happen to be a witness in the case?

A. I was called.

Q. Did you make yourself known to Counsel for the defendant? A. I have met Mr. McRoberts and Mr. Donnell.

Q. Before this trial?

A. I made a deposition in regard to this case, I believe about a year ago.

[fol. 1630] Mr. Bond: That is all.

Mr. Donnell: That is all, Mr. McDermott.

Mr. McRoberts: Now Your Honor, I am not sure that I made formal proof of all of my exhibits, and I would like in order to make sure that the record is clear at this time, make an offer of any and all of Defendant's Exhibits 1 to 25, inclusive, with the exception of those which have heretofore been offered and have been rejected by the Court, and the one exhibit, copy of the purchase order which was identified by one of these numbers and subsequently withdrawn. It is the blank form. I believe it was "Defendant's Exhibit 21." It was the blank first copy of the purchase order which was never properly supported and was withdrawn.

Mr. Bond: For the record I will renew the objections that I made to these exhibits at the time they were made. You are offering only those that the Court admitted.

Mr. McRoberts: That have not already been rejected. I am not offering those.

Mr. Bond: All right.

[fol. 1631] Mr. McRoberts: Now if Your Honor please, that is defendant's case with this one qualification to which I wish to direct Your Honor's attention, and that is it comes back to these original time-cards and records and

the inaccuracy in the computations of the alleged overtime hours. I point out to you that the testimony discloses that the figures contained in Plaintiffs' Exhibit A and carried over into the computations Plaintiffs' Exhibit B, will include certain time which we contend is not compensable under any theory and the only way in which an exact computation of that time can be made would be to recompute all of those cards. For example, where these computations include minutes before shift and minutes after [shift], which was not working time, that is not compensable, and yet that is reflected in some instances in these computations, and there is no regular rule of thumb that you can follow to say how much that amounts to. And I would like to suggest, if I may, that so far as defendant's part of this case upon final submission, that the case may be taken under submission with the understanding that if the final decision of Your Honor should make those exact hours material to the ultimate outcome of the case, that then and in that event Your Honor lay down certain rules to be followed and if the parties cannot agree upon those computations, that the matter could be then referred to a Special Master for the purpose of computation according to the principles which the Court had announced.

[fol. 1632] The Court: I had rather that would be heard.

Mr. Bond: I had thought that from their own testimony, Your Honor, that they make it clear that the men, if they are entitled to recover in this case at all, they are entitled to recover at least the amount reported in my Plaintiffs' Exhibit A, for the reason their own witness testified in making those pencil computations which went into the exhibits they gave me, he excluded all of that tolerance time and applied the One-tenth Rule. I don't know what authority they have for it, but they did it, and we are not complaining of the net figure that they put in. And that figure they put in was the net less a half hour which they assumed to take off from the starting of the plant until 1943, which I don't think they are entitled to take off, and I have it added in a separate column in my computations. Now I think we are entitled to recover either on the basis of the figures in Plaintiffs' Exhibit A, or if we are entitled to that half hour for lunch, then on the figures of the additional—I think we are entitled to recover on the

basis of the figures in Plaintiffs' Exhibit B which are carried over from Plaintiffs' Exhibit A, as counsel states, and in addition thereto a half hour to the date up to October, 1943, which I have shown separately. I do not think there will be any necessity for any Special Master or any accounting. I think if there is a finding in this case for the plaintiff that I can submit a finding of facts and law [fol. 1633], and a form of decree in which the details can be worked out with counsel.

The Court: I think it wouldn't be necessary to appoint a Master.

Mr. McRoberts: In this connection I called Your Honor's attention at the time the plaintiffs' Exhibit B was offered, I asked leave to reserve the objections until I had an opportunity to examine. And may I now at this time object to Exhibit B on the ground that the evidence in the case discloses that the computations reflected therein do not accurately reflect exactly the compensable hours upon plaintiffs' theory or upon any theory even if the plaintiff should be entitled to recover. And for that reason I object to the exhibit.

Mr. Bond: We do not think the facts sustain his objection, but we will discuss that in the briefs, I imagine, along with the other points.

Mr. McRoberts: Defendant rests.

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Thereupon, plaintiffs to further sustain the issues in their behalf offered and presented the following evidence in rebuttal:

Mr. Bond: I have a few witnesses, Your Honor, in rebuttal.

LEDRU W. TRIMBLE,  
of lawful age, produced, sworn and examined on behalf of plaintiffs, testified as follows:

[fol. 1634] Direct Examination by Mr. Bond:

Q. Mr. Trimble, state your full name, please sir.  
A. Ledru W. Trimble.

Q. Where do you live?

A. 7708 Horatio Drive, St. Louis 21.

Q. Are you married? A. Yes, sir.

Q. And what is your age? A. Forty-eight.

Q. Were you formerly employed by the St. Louis Ordnance plant? A. Yes, sir.

Q. You are one of the plaintiffs in this case? A. Yes, sir.

Q. According to our records here you went to work March 23, 1942, in what capacity?

A. I was employed as the First Aid Instructor.

Q. Instructor first aid in the safety department?

A. That is right.

Q. What were your duties?

A. Teaching first aid only, at the beginning.

Q. Tell us in a little more detail what was done by a teacher of first aid?

A. The employees under certain classifications were brought in for instructions in first aid for general relief, [fol. 1635] what to do in case of an accident, instructions in artificial respiration, control of arterial bleeding, venous bleeding, and they were shown pictures on first aid subjects.

Q. Was that your whole duty there in the plant?

A. At the beginning, yes, sir.

Q. How long did you do that?—Oh, I see. Well, go ahead, how long did you do that and what was your next duty?

A. It wasn't more than two or three months at the beginning until I was asked to give instructions in safety as well as first aid.

Q. Did you do that? A. I did.

Q. Some of those plaintiffs were in your classes?

A. Only a very few.

Q. How long did you continue to do that work?

A. Teaching first aid and safety until the employment ceased. That is, they ceased hiring new employees, after which time I was assigned to the clerical office for duties in helping to prepare records. I think they handled the uniforms as they came in and other items of a different nature other than teaching, because there was no teaching to do.

Q. Were they clerical duties?

A. Yes, sir, for the clerical office.

Q. Were you involved in any way in the matter of policy making? A. No, sir.

[fol. 1636] Q. As a teacher did you formulate any of the safety rules that they had out there? A. No, sir.

Q. Were you consulted in policy making? A. I was not.

Q. Or in the making of the safety rules?

A. I wasn't even invited to attend the safety meetings of the supervision.

Q. And likewise in your clerical duties you were not consulted in any matter of policy and rule making?

A. I was told what to do, how to make the reports out, how to make the compilation for information.

Mr. Bond: That is all.

Mr. McRoberts: No questions, Your Honor.

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ED L. STOCKHO,

of lawful age, produced, sworn and examined, testified on behalf of Plaintiffs as follows:

Direct Examination by Mr. Bond:

Q. Will you state your name, age and residence, please?

A. Ed L. Stockho, 7641 Wydowne, Clayton, Missouri, 40 years of age.

Q. You are one of the plaintiffs in this case?

A. Yes, sir.

Q. You formerly worked in the safety department of [fol. 1637] the St. Louis Ordnance Plant? A. Yes, sir.

Q. Tell us when you went to work and the changes that occurred.

A. I got transferred in the safety department in May, 1942, from the inspection department, and stayed in the safety department until I was terminated in August, 1945.

Q. What did you do while you were out there?

A. I was a safety inspector, and later on made audits.

Q. When you were safety inspector you patrolled, inspected and reported? A. Yes, sir.

Q. And worked on a shift? A. That is right.

Q. Is that the same work the other inspectors, the safety engineers do? A. Yes, sir.

Q. What did you change over to? A. Auditor.

Q. When was that?

A. I can't recall which month it was when they were made staff safety engineers. And they had four auditors at that time.

Q. What did you do as an auditor?

A. Made the same kind of reports, routine inspection and housekeeping hazards and checked machines and [fol. 1638] conditions in the restricted area due to bad housekeeping that could cause explosion.

Q. Did you have any policy making? A. No, sir.

Q. Rule making? A. No, sir.

Q. In the [formalization] of policies or practices?

A. No, sir.

Q. What you did you would do under instructions?

A. Yes, sir.

Q. And report what you did to your superior?

A. That is right.

Q. Did Mr. Miller ever have any direct contact with you? A. No, sir; he didn't.

Q. I notice here in our report that the company has given us of your pay roll record that from May 31, 1942, to 11/22/42 you were on a monthly salary of \$175 a month or gross wages of \$40.38 a week. I will show you that and ask you if that refreshes your memory on that?

A. That is correct.

Q. Did you get any overtime during that time?

A. All the while I was employed in the safety department I received no overtime.

Q. No overtime then? A. No, sir.

[fol. 1639] Q. I will ask you whether or not during that period when you were getting less than \$200 a month, you worked any overtime?

Mr. McRoberts: Just a moment, object. That is asking for an opinion and conclusion of the witness as to overtime. He can state the hours.

Q. Did you work in excess of 40 hours a week?

A. Yes, sir.

Mr. Bond: That is all.

Mr. McRoberts: No questions.

## WILLIAM STUTZ,

of lawful age, produced, sworn and examined, testified on behalf of plaintiffs as follows:

## Direct Examination by Mr. Bond:

Q. Will you state your full name, age, place of residence and occupation, Mr. Stutz?

A. William Stutz, 2209 Lynch Avenue, Nameoki, Illinois.

Q. You are a plaintiff in this case? A. I am.

Q. When did you go to work for the St. Louis Ordnance Plant? A. The first part of June, 1943.

Q. Tell us in what capacity, and the story of your employment there:

A. I went to work in the safety department and after about a week, approximately a week, that I rode around [fol. 1640] with Mr. Burke, and after that time the safety department took over the laundry and I went down to the laundry and worked in the laundry for—this is approximate, I think it was December of 1944, after which time I was—I had an office or worked in an office in the clerical department.

Q. While you were in the laundry what did you do?

A. Oh, I—what they term the laundry was a central gathering place for clothing that the company furnished the employees. They would gather the soiled clothing. A couple of colored men did that, and it was brought in, badge numbers were put on it and sent to two laundries that contracted for the cleaning of this laundry. It was brought back in and sent out—well, at one time they called them tool process and laundry cribs.

Q. Did you take part in those operations?

A. I would say approximately 95 per cent of the time I was working at maybe gathering up clothes, maybe delivering, maybe standing still—badge numbers—

Q. Did you have any matters of policy to determine in that laundry? A. No, sir.

Q. Were you consulted in rule making or in preventive measures? A. No.

Q. Who did you get your orders from?

[fol. 1641] A. In most cases Mr. Strickland.

Q. And did you ever have any contact with Mr. Henry Miller?

A. You mean when I was in the employ of the company?

Q. In the laundry, yes, sir.

A. No, sir, not in the laundry.

Q. Now then, you went from there where?

A. To the clerical office.

Q. What did you do in the clerical office?

A. I tabulated figures on accidents, and so forth and so on.

Q. It was part of the safety department? A. Yes, sir.

Q. And were you given any authority in there?

A. No, nothing outside of having to work with figures.

Q. Were you ever an instructor out there?

A. Yes, I did instruct in explosive safety training.

Q. In what? A. Explosive safety training.

Q. Now have you told me substantially all that you had to do out there? A. It was with one other exception.

Q. What?

A. Reports from the Medical Placement Department, which was part of the safety department, were sent to me ready to send them to Mr. McKittrick or Mr. Strickland once a week.

[fol. 1642] Mr. Bond: I believe that is all.

#### Cross Examination by Mr. McRoberts:

Q. Mr. Stutz; which sections did you have under your supervision? A. When did you mean?

Q. Well, at any time? A. The laundry.

Q. When was the laundry under your supervision?

A. Well, I would say about a week after I got there until approximately December of 1944. Now that is approximate on those dates.

Q. In other words, you started to work for the company in June, 1943?

A. Sometime the first part of June. I don't know the exact date.

Q. And you say you were assigned to the laundry to begin with?

A. That is right. Well, after about a week I was put into the laundry.

Q. And you stayed in charge of the laundry until about December, 1944?

A. I don't know—somewhere along in that time.

Q. Were you in charge of the laundry?

A. Well, I did what I was told to do by Mr. Strickland.  
[fol. 1643] Q. Was there anyone else in charge of it except Mr. Strickland over you?

A. Sometimes I reported to the assistant.

Q. You reported directly to Mr. Strickland or his assistant? A. Or his assistant.

Q. And you were then in charge of everybody else in the laundry itself, reporting to Mr. Strickland or his assistant? Is that correct?

A. I don't quite follow about "in charge."

Q. How many employees were there in the laundry ordinarily?

A. Oh, I don't know. I would say that it averaged probably forty or fifty.

Q. To whom did those 40 or 50 employees report? Who gave them orders and instructions?

A. I would carry out the orders Mr. Strickland gave me.

Q. And you would pass on those orders to 40 or 50 men under you? A. Yes, sir.

Q. While you were there were there anybody else giving orders and instructions to those 40 or 50 men or employees? A. Not that I know of.

Q. And you say you continued doing that from June sometime of 1943 until around December of 1944?

A. Yes, sir.

[fol. 1644] Q. Were any other departments put under your supervision? A. During that time?

Q. During that time? A. Not that I remember.

Q. Let's see if this will refresh your recollection. I show you a paper dated January 31, 1944. Is that your signature? A. That is my signature.

Q. Take a good look at it, Mr. Stutz. Just the first page, is that your signature?

A. That must mean—yes, sir, that is my signature, but that date doesn't quite jibe. You are sure that is not 1945?

Q. Mr. Stutz, this paper is addressed to Mr. Hirschberger, isn't it? A. That is right.

Q. Who is Mr. Hirschberger?

A. He was the assistant to Mr. Strickland.

Q. This purports to be a report dated January 31, 1944, from you to Mr. Hirschberger, is that correct?

A. Yes, sir. But I think that report should be dated January 31, 1945. I am not certain about that.

Q. Look down here under the caption, in addition to the date. What is the subject to that document? Just read it into the record.

A. "Progressive reports for week January 24th through [fol. 1645] January 29, 1944."

Q. And in this you state, "Attached please find weekly report of the various sections under my supervision, namely, Safety, Educational and Optometrist Office." Is that correct? A. Yes, sir.

Q. Did you have these sections under your supervision at the time that report was written? A. That is right.

Q. Will you glance through these reports? Apparently the first page is the only one which has a complete date on it. Is that also in January, 1944?

A. That is the date that is on the paper, yes, sir.

Q. Now Mr. Stutz, let's see if we can refresh your recollection some more. I will show you another paper bearing the date March 13, 1944. Is that your signature on that paper? A. Yes, sir, it is, regular form.

Q. And this is addressed from you to Mr. Kemp. And who was Mr. Kemp at that time?

A. Mr. Kemp was the assistant chief at that time.

Q. And this also relates to progressive report for the week of March 5th through March 11, 1944, doesn't it?

A. Yes, sir.

Q. That says, "Attached please find weekly report of the various sections under my supervision, namely, Safety, Educational, and Optometrist Office?" Is that correct?

A. Yes, sir.

[fol. 1646] Q. And the date itself on the inside is March, 1944, is it? A. Yes, sir.

Q. Then having had your recollection refreshed, do you wish to correct your testimony which you gave on direct examination?

Mr. Bond: In what respect?

Mr. McRoberts: Witness says he was in charge of laundry and nothing else from June, 1943, to December,

1944, and here now he states he had other sections under him.

A. Could I refresh my memory as to the date I said on that?

Mr. McRoberts: I think the record will show that you were employed June 7, 1943.

Q. Let me refresh your recollection some more. I will show you another paper. Does that have your signature?

A. Yes, sir.

Q. That is dated July, 1944. A. That is right.

Q. And in this case it refers to weekly reports not only of the safety, educational unit but also the safety, clerical, medical, placement, safety, uniforms and miscellaneous?

A. Yes, sir.

Q. Were those under your supervision at that time?

A. Yes.

Q. Now, Mr. Stutz, to what extent would you care to corroborate [fol. 1647] the testimony which you gave on direct examination?

A. I would like to have a sheet to show when I was employed and when I terminated, then I can tell you the approximate date.

Q. Look at Plaintiffs' Exhibit A and see if that helps you.

A. I guess that was December of 1943 on that laundry, according to this, because it was March of 1945 when I was terminated.

Q. Then the fact is that you were during the period of your employment supervising about 40 or 50 people in the laundry and also part of the time at least supervising employees in the safety, educational, optometrist office, safety clerical, the medical, placement, the safety, uniforms and miscellaneous work. Is that correct?

A. At different times, yes, sir.

Q. How many employees were there in these other sections which were under your supervision? Do they show on the reports there? A. No, sir, but I can tell you.

Q. Can you tell us how many were in these sections referred to in your report that you have in your hand?

A. Safety Educational varied from three to about eight

or nine. The Optometrist's Office, there was a doctor there in charge of that, and optometrist, and from one to two I think it was.

Q. And the safety educational unit?

[fol. 1648] A. Well, I would say at the most in the safety educational was about five or six.

Q. And the safety clerical?

A. That is from three to about eight.

Q. And medical placement? A. I think it was only one.

Q. Safety uniforms? A. That was the laundry.

Q. Is there another section called the Miscellaneous?

A. That was the work that I did myself.

Q. Did you give a course of safety driving?

A. That is right.

Q. Was that in May of 1944? And is that your report of the results of that course, that you have in your hand?

A. That is the test that was given. I haven't read it all over.

Q. Did you conduct safety meetings? A. I didn't.

Q. I call your attention to the minutes of a meeting held August 2, 1943, with the statement the meeting was called to order by Mr. Stutz, and so forth. Is that correct?

A. That is the meeting that was called out there. I will have to read that over to get the dope.

Q. You did call that particular meeting to order?

A. I don't remember whether I did or not. I would have [fol. 1649] to read it over. But it wasn't safety engineers, anyway.

Q. Well, the following were present in charge: Mr. Oberschelp in charge of laundry; Mr. Dobbs, safety engineer; Mr. Lantz, safety engineer, and tool cribs? A. Yes, sir.

Mr. McRoberts: That is all, Mr. Stutz.

#### Redirect Examination by Mr. Bond:

Q. In these departments which you would at times supervise, did you also do routine work?

A. As I stated, at the beginning I say approximately 95 per cent of the time I was working right with the bunch.

Mr. Bond: That is all.

## J. C. REEVES,

of lawful age, produced, sworn and examined on behalf of plaintiffs, testified as follows:

## Direct Examination by Mr. Bond:

Q. Mr. Reeves, state your name, age, place of residence, and occupation.

A. J. C. Reeves, age 48, 4955½ Arsenal, St. Louis 9, Missouri.

Q. Married? A. Yes.

Q. You are the plaintiff in this case? A. That is right.  
[fol. 1650] Q. You were employed by the United States Cartridge Company at the St. Louis Ordnance Plant?

A. I was.

Q. According to the record, I think your employment commenced on the 30th of January, 1942, and you were there three years or more, until March 10, 1945. Tell us about your employment.

A. There was an intervening time in there that I was to have—the building I was assigned to discontinued—I was out seventeen days approximately in that length of time that you have there.

Q. Tell us in what capacity you went to work there and what you did, what if any changes occurred in your rating of duties?

A. I went to work for the United States Cartridge Company as a guard and was transferred over to the safety department sometime around June 1st—that is approximate—1942, and assigned to Production Unit 102 as a safety inspector.

Q. And you did the same work as these other safety inspectors out there?

A. We did, we patrolled the building and wrote up accident reports, 39's, 5's—39 is known as first aid report; 5 is a hospital report.

Mr. McRoberts: That is hardly responsive to the question. You didn't want that, did you?

[fol. 1651] Mr. Bond: No, sir. I think we have gone pretty thoroughly on both sides into what the duties of the safety engineers and inspectors are.

A. I continued in that capacity in Building 102 until some time in the fall or the winter of 1942 or 1943, at which time I was called in by Mr. Strickland and his assistant Mr. McKittrick and was put in charge of what they termed the work order division. My duties there were to make sketches, prints of safeguards, and so forth, that would be recommended by the safety inspectors, submit them to them, and they would direct me to write a request for a working order, which I would do. And after I had written this request for a work order, I would take it back to them for their signature. And from there I would take it to the building superintendent in which this improvement was to be made, and he would initial it, and from there I would take it to Mr. Gilbertson, superintendent of production, and he would either kick it down or O. K. it. From there it would go back to the plant engineer, Jack Stewart's office, who would write the work order for it requiring working print to be made, his draftsmen to make it.

Q. Is that a full statement of your duties in your classification? A. That is right.

Q. What happened thereafter? Any change?

[fol. 1652] A. I continued in that capacity for approximately I would say, approximately a year. Now there might be a discrepancy there, but I would say approximately a year. Thereafter I was transferred over to production. When I say "production" I was still in safety work, nevertheless, I was working under the production department in Building 102 under the jurisdiction of Mr. Smith; who was superintendent of the building, or his assistant chief, it may be; when he wasn't on duty, then the assistant superintendent of the building was my superior.

Q. What did you do over there?

A. I patrolled the building, made inspections and wrote the reports as I outlined.

Q. As you had done when you were safety inspector?

A. And had safety meetings and discussed safety matters.

Q. That continued until your termination?

A. That continued until that building was shut down and went out of production, at which time I was laid off. And after I was out 17 days then the Cartridge Company took a contract to repair war equipment for the army, that

is for the service which is known as Army Repair Depot. And they brought me back in as safety inspector, at which time, aside from a very few weeks, I had the responsibility, total responsibility, for the safety in the building.

Q. That was for how long? That you had that responsibility?

[fol. 1653] A. Approximately April 17, 1944, until March 1st or April 1, 1945.

Q. Have you given us a complete description?

A. That is a complete description.

Q. Of your employment out there and the duties you performed? A. I think so.

Mr. Bond: That is all.

Mr. McRoberts: No questions.

The Court: Announce a 5-minute recess.

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Thereupon, at 4:10 P. M., July 12, 1946, a brief recess was taken. The proceedings were then resumed as follows:

ALFRED C. KEMP,  
of lawful age, produced, sworn and examined, testified on behalf of plaintiffs as follows:

Direct Examination by Mr. Bond:

Q. Mr. Kemp, state your full name, address, place of residence, age and occupation.

A. Alfred C. Kemp, I am 35 years of age, live 5463 Delmar, and I am a safety engineer.

Q. Are you one of the plaintiffs in this case? A. Yes, sir.

Q. When did you go to work for the St. Louis Ordnance [fol. 1654] plant? A. December 2, 1941.

Q. Tell your duties in the safety department, what you started at?

A. I started as a safety inspector and went from safety inspector to chief safety inspector, from chief safety inspector to assistant general safety inspector, and assistant general safety inspector to general safety inspector, and from general safety inspector to assistant chief safety engineer.

Q. When you got to be assistant chief safety engineer, you were then assistant to the head of the department?

A. Yes, sir.

Q. So in that way you started at the bottom and followed every gradation to next to the department head?

A. Yes, sir.

Q. So you are familiar with the department and its workings? A. Yes, sir.

Q. Tell us what the duties of the safety inspector engineers were in a brief way.

Mr. McRoberts: I think we have had that before, and this is rebuttal, Your Honor please. I don't think that is proper rebuttal.

Mr. Bond: Well, it isn't going to be alone.

The Court: But this is in rebuttal.

Mr. Bond: I will pass that, then; it has been gone into pretty thoroughly.

[fol. 1655] Q. I will take the matter of the department: how did the gradation function, to whom did the safety engineers take their problems?

A. They took them to the supervisor.

Q. To whom did he take his problems?

A. To one of the assistant chief safety engineers.

Q. Who did he take his problems to?

A. To the chief safety engineer.

Q. Now then, you were a safety inspector from, according to the report I have, from the 28th day of December, 1941. Do you remember the dates, or would it refresh your recollection if I showed you the report the company gave me. (A paper is handed to the witness)

A. The report doesn't show the actual titles we had in the safety department, it shows the safety inspector and senior engineer, and assistant staff supervisor, it doesn't show the actual titles we had out there in the safety department.

Q. Well, now, where was the policy made in that department? A. By the chief safety engineer.

Q. Was the assistant chief engineer involved in policy making? A. No, sir.

Q. When you were assistant chief engineer, assistant to Mr. Strickland, what did your duties consist of?

A. I was rather a go-between, between Mr. Strickland and the supervisors. In other words, if the supervisor had [fol. 1656] problems they would take them up with one of us. There happened to be two assistant chiefs they would take them up with one of them. We would take them up with Mr. Strickland.

Q. Who would be the man to exercise his judgment on the problem?

A. In most cases when the problem came to you from the supervisor you wouldn't exercise any judgment on it.

Mr. McRoberts: I think the witness should be asked to tell what he did, Your Honor.

The Court: Sustained.

Mr. Bond: He said he was a go-between between the men below him and the man above him.

Mr. McRoberts: That is obviously a conclusion or opinion.

Q. Just what did these go-between duties consist of?

A. Mostly handling of the reports from the supervisors, between the supervisors and Mr. Strickland.

Q. Would the supervisor's report come to you, or would it go direct to Strickland?

A. No, sir, it would pass through us first.

Q. Where did the supervisor get the report?

A. From the safety engineers in the units.

Q. Then they would include the reports they got from the safety engineers, in their reports to you, and you would relay it to Strickland? A. Yes, sir.

[fol. 1657] Q. If those problems arose in the report while you were safety engineer, did you have any authority to decide them in any way?

Mr. McRoberts: Object to that. Let him [described] what he did.

The Court: Yes, sir.

Q. As safety engineer and inspector, just what did you do when you were at the bottom of the list?

Mr. McRoberts: We are in rebuttal.

Mr. Bond: I beg your pardon, Mr. Miller in this case—we are under no obligation to rebut the affirmative defense, we are presumed to be covered by the Act. Now Mr. Miller comes to the stand and gives testimony as to what this man did, what his responsibilities were. Now in rebuttal we have opportunity to rebut that. I put no case on in chief for Mr. Kemp any further than the fact he was engaged in the production of goods for commerce at this plant.

Mr. McRoberts: You didn't put that on, there was no evidence at all as to what Mr. Kemp's duties were in plaintiff's case.

Mr. Bond: When Your Honor comes to examine the decision you will find the plaintiff is not required to go into his duties in the matter of whether or not they constitute exemptions or not, in his main case, that is a matter that must be pleaded and proven in defense, and he may rebut [fol. 1658] it. The Act is presumed to cover every employee engaged in the production of goods for commerce. The man that pleads exemption must plead and prove it. Mr. Miller got on the stand and gave testimony to try to sustain the exemption. I want to rebut it.

The Court: Proceed.

Q. What did you do as safety engineer or inspector?

A. When I first started I made inspection in the units. After I became chief safety inspector I was made one of the supervisors over the men in the units to handle the reports between them and the assistant safety director, I think he was called.

Q. While you were down in those two brackets as safety inspector or safety engineer, when you included those problems in your report did you have any authority to decide those problems?

Mr. McRoberts: I think that is too general, the question should be confined to a particular problem and witness should be asked as to what he did with respect to that problem.

The Court: Sustained.

Q. In making your routine inspection as safety inspector, when you noted violations of safety practices or rules, to whom would you report for correction?

A. To my supervisor, the same as the rest of them.

Q. Would you take any corrective action yourself?

A. It depended upon the nature of the infraction.

[fol. 1659] Q. In what cases would you take any corrective action?

A. It depended, like life and death depended on the infraction.

Q. You mean emergency? A. An emergency situation.

Q. When you became a supervisor and those were reported to you, did you take any corrective action yourself?

A. It was practically the same then as it was when I was in the unit. The only time you took any definite action is when it was an emergency problem, and then it depended entirely upon the man who was in supervision of the unit as to whether you would then get it done.

Q. How did it depend on the man?

A. If he wanted to do it, he would do it. If it was going to slow down production or probably stop production, you probably wouldn't get it done.

Q. By "the man", you mean production foreman?

A. Production foreman or superintendent.

Q. Were you in a position either as inspector or supervisor to give him any orders? A. No, sir.

Q. Now, then, when the problem came from the supervising inspector up to the assistant chief engineer, what action did or could he take in the matter?

A. The only action he could take would be to go to the chief safety engineer.

[fol. 1660] Q. That is the top?

A. That is top, and even the top would probably cry on the management's shoulder to try to get the infraction corrected.

Q. Now these policies that obtained in the safety department, who formulated them?

A. The chief safety engineer.

Q. Did anybody below the grade of Chief Safety Engineer have any part in them?

A. They might have been discussed in some meeting, but he approved them.

Q. Now I believe this top title which you finally held as assistant chief engineer—do you know how long before you left it was that you held that?

A. No, sir, I was out of the safety department for some time. I was in the engineering department plant, engineering department.

Q. I see here according to this report that I have, it was from July 17, 1943, to termination. Prior to that you held the subordinate positions that you have told me about?

A. That might have been true. I don't believe, we had so many different titles out there it was hard to keep track of them.

Mr. Bond: I believe that is all.

[fol. 1661]. Cross Examination by Mr. McRoberts:

Q. Mr. Kemp, let me ask you if this is a correct statement as to the duties of a safety engineer or a safety inspector: "(1) That he would regularly inspect the entire property in his area for the purpose of eliminating safety hazards of all kinds. Inspect machinery, lighting, floors, exits and storage materials." Is that part of the duties of a safety engineer? A. That is right.

Q. Can you give me any idea how much of his time he would be spending in that particular part of his duties? What is your best judgment approximately?

A. He would be spending all of his time inspecting.

Q. Let me go down and ask you some more questions, and then perhaps we can clarify it. "Recommend changes such as additional machine guards, additional safety services, new storing methods, and new types of equipment." Is that part of the duties of the safety unit? A. Yes, sir.

Q. "Check manual movements of employees, pointing out unsafe practices to supervisor." That is, to the employee's supervisor? A. That is right.

Q. Is that part of the duties? A. Yes, sir.

[fol. 1662] Q. "Using his knowledge of safe practices, recommends changes calculated to decrease work hazards." Is that part of his duties? A. Yes, sir.

Q. "Make reports recommending general safety procedure not connected with a particular accident."

A. Not connected?

Q. Not connected with a particular accident. In other words, would the safety engineer on occasions, would it be his duty to make a report or recommendation of some safety procedure that he thought should be instituted, even though no accident had occurred on that particular operation? A. No, sir, I don't think it would.

Q. Do you know whether that was ever done?

A. If it was, it wasn't a common occurrence.

Q. Next, "Hold meetings of the unit and safety committees promoting the adherence to safety regulations through employee cooperation."

A. We held very few safety meetings.

Q. Would you say that is part of it, holding meetings of the unit and safety committees? Would that be part of the duties?

A. I would say 90 per cent of the safety engineers of the plant never attended a safety meeting.

Q. "And see that injured employees receive immediate attention and care." Would that be part of his duties? [fol. 1663] A. In a way it would, if he happened to be there when the accident occurred.

Q. And if necessary to give them first aid?

A. That is right.

Q. "Submit a written report of every accident, suggesting preventive measures." Would that be part of his duties? A. That is right.

Q. Would a safety engineer on occasions instruct groups of employees, with approval of departments concerned, in proper use of safety equipment?

A. That should be the case, but it wasn't out there.

Q. Wasn't that the duty of some of these safety engineers? A. It was our instructions.

Q. They were classed as safety engineers?

A. They hold the titles of safety engineers.

Q. Such as Mr. Trimble? A. Yes, sir.

Q. And he held the title of safety engineer, but spent his time instructing? A. Yes, sir.

Q. The duties of the safety engineers were not to make safety policies but to carry them out?

A. Not to carry them out, but see they were.

Q. And by that you mean, do you not, Mr. Kemp, that

if the safety engineer observed the hazardous condition or [fol. 1664] hazardous method of operation by an employee, it was his duty to call it to the attention of that employee's superior and recommend to that superior whatever he thought was the proper corrective measure?

A. That is right.

Q. Now he had no power to compel that supervisor to take that corrective measure. All he could do was to see, advise and make recommendations? A. That is right.

Q. And if these recommendations were not carried out, if his advice was not followed, all the safety engineer could do would be to report it to those higher up, who would undertake to try to have that advice carried out, if they thought it proper to do so? A. That is right.

Q. I am reading now from the general instructions given to safety engineers. The statement is made—well, it is his duty to observe and correct unsafe methods, and to observe and correct any unsanitary or unhealthful conditions. How could a safety engineer determine whether or not a particular condition was unsafe?

A. From previous experience.

Q. He would look at it and see and use his best judgment based on his experience and training? A. Yes, sir.

Q. And is the same true with respect to unsafe methods of operation or unsafe courses of procedure by an employee [fol. 1665] of safety engineer to merely observe that employee and based upon his experience and training decide whether or not that was an unsafe or hazardous operation? A. That is right.

Q. And make his recommendation or not accordingly?

A. Yes, sir.

Q. Mr. Kemp, I believe you testified on direct examination that in case of extreme or immediate hazard, or danger, that the safety engineer did have authority to stop the operation or to stop machinery? A. Yes, sir.

Q. And those instructions were contained not only in the general instructions, but from time to time were repeated, were they not? A. Yes, sir.

Q. Orally and in writing to the safety engineers?

A. Yes, sir.

Q. Mr. Kemp, what was your highest title?

A. Assistant Chief Safety Engineer.

Q. Assistant chief safety engineer. You were over all of the employees of the safety department except your boss Mr. McKittriek? A. One assistant.

Q. And one or two assistants on the same level with you? A. That is right.

[fol. 1666] Q. When you held whatever title it was just under that, you were in charge of all employees in certain departments under you, or safety engineering department employees? I have gotten that all "balled" up.

A. Just the supervisors.

Q. Just the supervisors. You dealt with the supervisors, and the supervisors dealt with the safety engineers? A. That is right.

Mr. McRoberts: That is all.

#### Redirect Examination by Mr. Bond:

Q. The supervisors worked a shift the same as the engineers did did they not?

A. We all worked shifts for a long time.

Q. I mean they inspected and patrolled and reported?

A. That is right.

Q. Everybody inspected, patrolled and reported up to the top title you got to?

Mr. McRoberts: Wait a minute, it is leading and suggestive.

Q. The inspectors or engineers did the routine inspecting and patrolling and reporting.

A. The same as we did that, or the same thing, even though we were assistant chief safety engineers.

Mr. McRoberts: Let the witness testify.

A. We made regular inspection and had to go back at night to make regular inspections and check on the super-[fol. 1667] visors. We checked on the supervisors and on the inspectors in the building, and we had to make reports to Mr. Strickland the same as we made reports to the supervisor.

Mr. Bond: I see. That is all.

Mr. McRoberts: That is all, Mr. Kemp.

**WILLIAM F. O'MEARA,**

of lawful age, produced, sworn and examined, testified on behalf of plaintiffs as follows:

**Direct Examination by Mr. Bond:**

Q. State your full name. A. William F. O'Meara.

Q. And your residence. A. 3930a Chippewa, St. Louis.

Q. You were formerly employed at the St. Louis Ordnance Plant? A. Yes, sir.

Q. And you were like Mr. Kemp got up to the top of the department next to the director, before you left?

A. Not quite. I was never in the capacity of assistant chief safety engineer, I was merely an assistant staff supervisor.

Q. When you quit.

A. That is the title they have on there, but they called me a supervising safety engineer.

[fol. 1668] Q. When did you go to work there, and in what capacity, and what was your duty, and tell us any changes that occurred.

A. I don't know the exact date but I think I started May, 1942.

Q. Do you want this to help? (A paper is [pasted] to witness.)

A. Sometime the first part of May, 1942, I went to work as safety inspector in Building 102. The first week I was there I was assigned to another man that had worked in that building, and he took me around and introduced me to the superintendent and showed me what I had to do insofar as making inspection of employees to see if they had their safety glasses and shoes, and certain fixed guards on all machines I had to see if they were in place, and visit the first-aid room periodically over the day and see any reports of accidents.

Q. Was any other training given you before you took the job?

A. I think I got out there on Saturday and they gave me eight hours, or whatever it was. I worked the first day for Mr. McDermott. Then I think I reported back Monday and went right into the unit with these men, and then they held some periodical safety lectures that we

were allowed to attend, either at the end or beginning of the shift, for about an hour, and then go on with your duties until later on.

Q. What did you do in your first capacity as an inspector?

A. Patrolling, and inspecting all safety glasses and hair nets and accident reports on safe practices.

[fol. 1669] Q. Along the line of those general instructions which you heard me read in evidence?

A. We were given one of those books immediately, to look over.

Q. Plaintiffs' Exhibit F? A. Yes, sir.

Q. And you undertook to perform the duties as stated in that book for safety engineers?

A. Yes, sir, they gave us one of those pamphlets showing how a fellow would be stooping when he would lift, and we were supposed to observe from the illustration and try to find out the best method to lift.

Q. How long did you remain a safety engineer? What was your next change?

A. I remained a safety—I was safety inspector first, and they later changed that to safety engineer. I am referring to my own records.

The Court: Safety inspector and engineer.

A. Do you want me to tell, Your Honor, why the distinction was made?

The Court: Some other witness said there was none.

Mr. Bond: We have been using them as interchangeable.

The Court: That is what I thought. What was the difference?

A. No difference between safety inspector and safety engineer, but a regulation to change the title.

[fol. 1670] Q. Regulation to change the title but no change in the duties? A. That is correct.

Q. So far as the duties were concerned the terms were interchangeable! You did the same thing as inspector as you did as engineer? A. Yes, sir.

Q. How long did you continue there as inspector or engineer? A. Until June—

Mr. McRoberts: May I ask, you are now referring to some record or memorandum.

A. Just my dates when my titles changed.

Mr. McRoberts: May I ask if this is a memorandum or record which you made at the time while you were [en] employee of the company? A. No, it isn't.

Mr. Bond: Every witness had papers on his lap. It is some pencil figures and notes for his testimony, that is all.

Mr. McRoberts: He is a graduate lawyer, he was an administrator of a law school, he is capable of testifying without referring to prepared notes.

Mr. McRoberts: What is the source of that information?

A. I don't remember when my title changed, Mr. McRoberts, and I referred to, I think it is Plaintiffs' Ex-[fol. 1671]hibit A, as to the dates my salary changed, and that is the date that my code was changed giving me a different title.

Mr. Bond: I insist that it will save time, and I insist—

The Court: He has a right to use any paper that he might have. It depends on what it is.

Mr. Bond: Can you get along without it?

The Witness: Yes, sir. I can get along without it. My title was changed in June of 1943 to what I was informed was supervising safety engineer on special assignment.

Q. (Mr. Bond) What did you do after that change in title? Was there any difference from what you did before? If so, what was it?

A. I was in the office at that time and we had progress reports made each week from the safety department direct to Mr. Miller's office, Mr. Miller being in direct charge of the safety department over the chief safety engineer, and it was my duty to fill in the field reports of the various engineers from the different manufacturing units in restricted areas from the information they turned in on their reports, to make up what was called a Progress Report, and it would be what is consolidating the reports into one report that would go from the safety department to Mr. Miller's department under the heading of Progress Report. But

I think it is a safety engineering unit. I can't recall the exact words. It is more of a clerical statistic.

[fol. 1672] Q. Those duties you describe as clerical?

A. Yes, sir.

Q. Did they involve the exercise of any judgment?

A. Not those duties, no, sir.

Q. Go ahead.

A. Well, that was the import of my work at that time, unless there would be—in some instances there might be absenteeism, I would have to sit at the other supervising safety engineer's desk. Our office was in what was called the fire house general office on the second floor, and the supervising safety engineer's office was on the first floor. And they had a telephone where, the men had to call in every hour and would report any unusual condition. And if we wanted them we had a call whereby we could contact them if something special happened that we didn't know, but we had to get them in a hurry. I operated in that position. And if I had them and they brought in a report on some condition, say a man wasn't wearing safety shoes in the restricted area and the foreman wouldn't put them out, he would make the report and they passed that up the line to the assistant chief safety engineer, and he would pass it to Mr. McKittrick. And if the information came back from Mr. Strickland to the assistant chief, he would give it to me. Sometimes I would have to have it typed and make eight or nine copies, depending on how many safety engineers there were. I might have to make the [fol. 1673] ninth copy of Mr. Strickland and circulate them to the men. We tried to give each man the benefit of each investigation, or each decision.

Q. How long did you continue to do that work that you have just described?

A. I did that until December of—well, a short time after that they put me in what is called the clerical office where they made a computation of all the actual statistics for the purpose of trying to find out who in the plant was accident prone. And those reports would go on to Mr. Strickland's office, and he would maybe make recommendations. That was reported. Also there were about eight girls in that office taking off what we call Form 39. It was an accident

form that was required from first aid cases. It was a standard form copied I think from the National Accident Prevention Organization. And there were check marks of the different types of accidents, and the girls would classify them, so many accidents from falling objects, so many cuts on the hand, so many toe accidents. And we would compile them into various reports and find out which accidents were becoming more frequent, what employees were having the greater number of accidents. I functioned in that capacity under special assignment until December, 1943, when I relieved Mr. Stutz in the laundry. And then I went in charge of the safety uniform department in our plant. We furnished uniforms to all the employees in restricted areas. We handled powder or anything like that. [Of] if they worked in any kind of opera- [fol. 1674] tion that was detrimental to their clothes, or other than their clothes. Men came and changed every day, and so did women, and they were distributed by badge number. I think at one time they probably had 80 employees in that department. I operated in that department from December practically until the time I left. I don't remember the date I left the plant, with the exception that when Mr. Kemp left the department they also told me I would be in charge of the safety stores where the employees could buy safety shoes and get goggles exchanged, and all different things as that. In between from time to time, like I told you, I might be at the supervising safety engineer's desk in charge of men, and anything else.

Q. This is a complete story, then, of your employment at the plant?

A. I think it is. I don't think I left anything out.

Q. And shows the different duties you performed at the different times in the department? A. Yes, sir.

Mr. Bond: May I have that letter that bears Mr. O'Meara's signature? Wasn't there one here in reference to a report on a fire which occurred at the fire-house?

Q. I show you Defendant's Exhibit 17 and ask you to tell us briefly the circumstances under which that was signed.

A. This is a letter that was prepared by Mr. Jack

Sewell for myself and Mr. Maher, and I don't know whether there was one prepared for another man in the [fol. 1675] department or not, to relieve the department of embarrassment due to the fact that a fire occurred in our department where the fire apparatus was housed. And I was given the letter and I was told to sign it.

Q. Is the language in that letter your composition?

A. No, sir, this letter was handed to me to be signed. It was typed up by Jack Sewell himself, because the department didn't want any embarrassment on the management due to the fact we allowed a fire to occur in our own office. And I was requested in a sort of mandate to sign that letter.

Q. What routine work did you do in the laundry and safety stores, and how much time did you spend on it?

A. You mean ifsofar as—I didn't get you exactly right.

Q. During the period where you had supervision over the laundry. Didn't you at one time?

A. Yes, sir, I was there.

Q. When you had supervision did you do routine and manual work, too?

A. Yes, sir, I would have to go into a crib in the morning and pass out uniforms when there was nobody there. And I assorted clothes when they came back from the laundry the same as employees. I had to take reports of new employees that came in, and had to make up a special form we had for badge numbering those clothes and see that the cribs were properly filled with plenty of uniforms where there wouldn't be any labor trouble due to a shortage of uniforms. We had employees, if you didn't [fol. 1676] give them clean garments they wouldn't go to work.

Mr. Bond: That is all.

Cross Examination by Mr. McRoberts:

Q Mr. O'Meara, this Defendant's Exhibit 17 to which Judge Bond referred and which bears your signature?

A. Yes, sir.

Q. And which you say you had a mandate to sign?

A. I did absolutely.

Q. You are a graduate lawyer, I believe? A. Yes, sir.

Q. And were administrative director of a law school, City College of Law and Finance, from 1934 to 1941, were you not? A. Absolutely correct.

Q. I will ask you if there is any false statement in that document that you have in your hand, Defendant's Exhibit 17.

A. I wasn't a supervising safety engineer at that particular time. I wasn't made that until June of 1943.

Q. Your title is written there? A. Yes, sir.

Q. Is there anything else written?

A. May I read the letter? To tell the truth, I haven't exactly read it.

Mr. McRoberts: Sure (Witness reads the letter, inaudibly.)

A. The only thing wrong I didn't pass judgment, Mr. McRoberts. I didn't pass judgment on the problems. I [fol. 1677] didn't have the authority.

Q. Is there anything in here that says you passed judgment? Oh, excuse me, I see it. You state "it is my duty to keep in constant contact with the safety engineers, pass judgment on any problems which come up."

A. It never was my duty to do that.

Q. That was not your duty when you signed the letter?

A. That is true. I admit I signed it even though it wasn't my duty.

Q. What were you supposed to do with any problems that came up?

A. If any problems came up when I was in a supervisory capacity I would pass them on to the assistant chief safety engineer, who in turn would pass them on to Mr. Strickland for a conclusive report on what was to be done. If he gave me a written order I would write the order and number all copies that were necessary to go to the number of men I would be supervising. But I didn't, I couldn't make the decision. I didn't have the authority.

Q. Maybe we are using terms in different ways. While you were a plain ordinary safety engineer you were passing judgment every day on a question whether this is or is not a hazardous occasion or hazardous way of doing the

operation, or unsafe place to work. You were doing that every day?

A. I had been according to what I construed it. We had [fol. 1678] definite fixed rules as far as safety was concerned. When I was working in Building 102 the first thing I did was to check every employee to see if he had his safety shoes and glasses.

Mr. McRoberts: You are getting away from the question. This document speaks for itself. It carries the Brian's signature. He testified as to the circumstances under which it was [it was] written, and I think the Court can weigh and consider the witness' testimony in the effect of the document. I will withdraw the question.

Mr. McRoberts: That is all.

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WILLIAM B. NIEDRINGHAUS,  
of lawful age, produced, sworn and examined, testified on  
behalf of plaintiffs as follows:

Direct Examination by Mr. Bond:

Q. State your full name. A. William B. Niedringhaus.

Q. Age and place of residence.

A. 2212 Lynch Avenue, age 33.

Q. Are you a plaintiff in this case? A. Yes, sir.

Q. When did you go to work for the St. Louis Cartridge Company? A. I believe it was April 20, 1942.

[fol. 1679] Q. In what department and what capacity?

A. I went into the safety department as safety inspector.

Q. Do you remember how long you stayed as a safety inspector, or did you want to see Exhibit A-13 to refresh your recollection?

A. No, sir, I couldn't give definite dates, my duties were so numerous. I don't believe this reflects different things.

Q. How long did you perform the duties of a safety engineer as you heard them described here?

A. Well, I worked with the safety engineer in one of the unit buildings for approximately a year. I was then

transferred to roving inspector which duties were very similar.

Q. What do you mean by "roving inspector?"

A. I went to various buildings. I covered practically all of the buildings.

Q. In those buildings you performed the duties of safety engineer? A. Yes, sir.

Q. But roved around from one to the other instead of being permanently assigned to one? A. Yes, sir.

Q. Go on from there.

A. After serving for a period of time as a roving inspector I was sent to Chicago to go to school.

Q. Who sent you there?

[fol. 1680] A. Why, Mr. Strickland sent me there. I don't know why they sent me. They thought you needed it, I guess.

Q. Go ahead. A. After I returned from school—

Q. What did you study when you were up there?

A. I studied various different things, psychology and chemistry and industrial safety, and fire hazard conditions.

Q. How long did you stay there? A. Six weeks.

Q. What did you do after you came back?

A. I was assigned to the laundry.

Q. What did you do in the laundry?

A. I worked in the laundry, the majority of the time was spent putting up cribs and stapling numbers on cribs. And it also included, after the majority of the cribs were fixed up, I was going around checking the different ones to see how everything was functioning.

Q. Where did you go from the laundry?

A. From the laundry I went back into the safety engineering department.

Q. As an inspector again?

A. Apparently their records show I went back as a supervising engineer.

Q. What did you actually do?

A. I actually did the same job I did before, a safety engineer. In fact, I never checked the dates on that.

[fol. 1681] There were not any safety engineers left to supervise.

Q. What classification did you have when you were terminated. Wait, I won't go to that yet. Go along with the

story when you went back and had the title of supervisor but did the same work as inspector? How long did that continue and what did you do thereafter?

A. I don't know how long I remained as supervising engineer. The record shows it was until the end of my employment, and about the last year I was assigned as an auditor, and I was also secretary for the Employees' Safety Committee.

Q. As an auditor, what did you do?

A. I went through different buildings. I went through all of the buildings and made a general inspection writing down my recommendation. At the end of the inspection I went to the superintendent's office and read him off what the recommendations were. In some cases he said what I could do and what I couldn't do. I returned to my office, wrote up the recommendations, gave them to my supervisor who in turn passed them to the assistant chief safety engineer, and he in turn passed it on to the director. And they were sent to the superintendent and a copy to Mr. Gilbertson who was in charge of all production.

Q. Were there any further duties you performed there before you left? A. There might have been.

Q. That is all you remember?

A. I changed around so much.

[fol. 1682] Q. During all the time you were there, did you have any problems in which you had to make decisions yourself?

Mr. McRoberts: Just a moment. I think he had better describe what he did.

The Court: You had better complete it.

Mr. Bond: All right, go ahead.

Mr. McRoberts: Objection is sustained, I take it!

The Court: Yes, sir.

Q. Were you consulted in policy making? A. No, sir.

Q. In rule making?

A. None, other than I would submit a recommendation.

Q. Where the safety rules prescribed, it had to be followed in the departments? A. You mean in booklet form?

Q. I don't know what form. Were there any prescribed set of safety rules that the inspectors checked violations of?

A. There were some, yes, sir. In some cases they were even posted on the walls as to explosive limits.

Q. And the equipment the employees had to wear, that was prescribed?

A. I believe that was prescribed in the form. It showed every department what they were required to wear: uniform, safety shoes and safety glasses, and no jewelry, and so forth.

Q. And those prescriptions all come down from the head [fol. 1683] of the department? A. Yes, sir:

Mr. Bond: That is all.

Mr. McRoberts: No questions.

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BURCKHARDT H. HARGATE,  
of lawful age, produced, sworn and examined, testified  
on behalf of plaintiffs as follows:

Direct Examination by Mr. Bond:

Q. Tell us briefly, give us your name.

A. Burkhardt H. Hargate.

Q. Where do you live?

A. 7037 Holly Hills, St. Louis County, Missouri.

Q. What is your occupation?

A. I am with the St. Louis Administration Center.

Q. Did you work for the United States Cartridge Company in the safety department? A. Yes, sir.

Q. When did you go to work? Tell us when and what you did. Give us the story of your duties.

Mr. McRoberts: Is there any controversy?

Mr. Bond: I haven't my notes here now. We can save time. Mr. Miller said he was a supervisor, I understand.

Mr. McRoberts: Mr. Miller tells me he was never supervisor.

[fol. 1684] Q. You never were? A. No, sir.

Q. You were an inspector?

A. I was an inspector the full time, or safety engineer.

Q. The whole time? A. Yes, sir.

Q. Never were a supervisor and never performed any duties except those of inspector or supervisor?

A. I mean no titles.

Q. Inspector or engineer? A. Yes, sir.

Mr. Bond: I don't think then I need him since he was not a supervisor. We had it in our notes he was said to be a supervisor, and I wanted him to say that he was not.

Mr. McRoberts: He was transferred to the safety traffic department where he was called a supervising safety engineer in the traffic department for a while.

Q. During all the time you were there you were safety inspector or safety engineer? Is that it?

A. Yes, sir, I was in the safety department, and after I was transferred out of it they called me a foreman.

Q. Was your work any different before they called you that than afterwards?

A. I wasn't in the safety department any more. That is when I was transferred to production control, February, 1945.

Q. February, 1945?

[fol. 1685] A. I believe that was the date.

Mr. McRoberts: Was it March 12, 1945?

A. That might be, I don't know. I know it was quite late.

Q. The only difference, you did the same thing, safety inspector, right up to March, 1945. And then you left the safety department and went in the production department as a foreman? A. Yes, sir.

Mr. Bond: That is all.

Mr. McRoberts: No questions.

Mr. Bond: That, Your Honor, is the case.

Thereupon, defendant to further sustain the issues in its behalf, offered and presented the following additional evidence:

RUSSELL R. CASTEEL,  
previously sworn, was recalled for further examination  
as follows:

Direct Examination by Mr. McRoberts:

(A paper is marked "Defendant's Exhibit 26".)

Q. Mr. Casteel, I show you Defendant's Exhibit 26 and ask you if that is another one of the supplements to the contract, Defendant's Exhibit 20, being designated as "Change Order No. 17"? A. It is.

[fol. 1686] Mr. McRoberts: Now I am offering the document itself in evidence, but to save time will you state to the Court what the subject of this change order was?

A. Early in March—

Mr. Bond: The record shows my objection to that as part of the contract?

The Court: If it doesn't, it may.

[fol. 1687]

## Defendant's Exhibit 26.

## Duplicate

All communications should be accompanied by carbon copy and addressed to

Markus/cs

To insure prompt attention  
in replying refer to  
SPOIA

18 March 1944

Attention of

War Department

Office of the Chief of Ordnance  
Small Arms Ammunition Sub-Office

N. W. Ayer Building, West Washington Square  
Philadelphia, Pa.

The United States Cartridge Company  
c/o Western Cartridge Company  
East Alton, Illinois

Attention: Mr. John Olin

Gentlemen:

Subject: Change Order No. 17 to Contract W-ORD-491, as amended—(St. Louis Ordnance Plant)

In consideration of the work undertaken by your company (hereinafter designated the "Contractor") under its Contract No. W-ORD-491, as amended, and by virtue of Article III-Q, Title III, of said Contract, the terms of said Contract are hereby amended in the following respects:

A. Whereas the Government has requested that certain space in the St. Louis Ordnance Plant be made available to it for the purpose of reconditioning, rebuilding, repairing, etc. certain Government-owned equipment under the con-

trol of the Office, Chief of Ordnance, Field Service Division; and

Whereas the Government has requested the Contractor to assume such additional work under this Contract, and the Contractor is agreeable to assuming such additional work but only upon the terms and conditions herein contained;

Now, Therefore, in consideration of the premises:

Article I-B, Title I, page 7, is changed by the addition of the following paragraph:

11. In addition to all other work to be performed by the Contractor under this Title I, the Contractor is authorized to do, and shall do, as may be directed or approved by the Contracting Officer, during the six months period from March 15, 1944 to September 15, 1944 or during the period that small arms ammunition manufacturing operations continue by the Contractor in the plant under this Title I, whichever period is the lesser, all things (including the establishment of facilities therefore at the plant) necessary, convenient or incidental to recondition, rebuild, reclaim, repair, inspect, salvage and/or deal with, handle or dispose of such Ordnance equipment and/or parts (including, without limitation, tools, shovels, picks, pumps, lathes, motors, automobile and truck equipment and accessories and other machinery, tools or the like which are used to repair or maintain other machinery or equipment) as are sent in to the plant for that purpose by the Office, Chief of Ordnance, Field Service Division; provided, however, anything to the contrary contained herein notwithstanding, that the work relating to the small arms portion of the plant shall take precedence and have priority over the work herein above in this paragraph provided for; provided, however, in case there is any conflict in that regard, final determination of what work takes precedence and has priority over the other, shall rest with the Contracting Officer. The establishment of the necessary facilities for this work shall be accomplished, to the extent reasonably and practicably possible, by the conversion of presently existing plant facilities, to the extent available for that

purpose, and no additional machinery or equipment shall be purchased by the Contractor without the prior approval of the Contracting Officer. It is contemplated that the plant space to be made available to the Contractor for that purpose will be the 102 Building presently comprising a part of the plant and/or such other additional and/or lesser space as may hereafter from time to time be assigned or approved by the Contracting Officer to the Contractor for such purpose. All costs and expenses, without limitation, incurred by the Contractor in connection with or incidental to the accomplishment of the work provided hereby, shall be reimbursed to the Contractor under the provisions of Title II and other applicable provisions of this Contract.

Said work shall be performed in accordance with the directions and specifications to be promptly furnished from time to time to the Contractor by the Contracting Officer.

The Property Officer of the Office, Chief of Ordnance, St. Louis Ordnance Depot shall be the accountable officer for the additional work added hereby, and the Contractor shall not assume any accountability for any property received by it at the plant pursuant to the terms of this Change Order which is related to the work contemplated or provided to be performed hereby; provided, however, the Contractor shall assume and exercise the same degree of care (as limited by Article III-F, Title III of this Contract) with respect to such property as it is required to assume with respect to any other property under the terms of this Contract.

The Contractor under the terms of this Contract, has the right, with the approval of the Contracting Officer, to subcontract, without in any way affecting the fixed fee to be paid to the Contractor for its work under this Contract. Nevertheless, in order that there may be no question in that regard with respect to the Contractor's right to subcontract any portion of the work provided by this Change Order, it is agreed that when, in the opinion of the Contracting Officer, it is to the best interests of the Government, the Contractor shall, when so ordered or authorized, subcontract any or all items or classifica-

tions of work required under this Change Order or sub-[fol. 1689] sequently added thereto. Such subcontracting of work, or the performance thereof by the Contractor, regardless of the amount and/or extent of work performed or subcontracted, all with the prior written approval or order of the Contracting Officer, shall entail no adjustment in the fixed fee to be paid the Contractor for its work under this Change Order. That fixed fee as and when agreed upon, will be determined in the light of the fact that all such work may be subcontracted pursuant to the foregoing provision, and such fee shall be deemed to include compensation for the services which may be rendered by the Contractor in the negotiation, supervision and coordination of any such work subcontracted, and the responsibility assumed by the Contractor in connection therewith, and such fee shall be deemed to be reasonable regardless of the amount or extent of work performed or subcontracted.

It is presently impossible to ascertain with any degree of accuracy the estimated cost for the additional work provided by this Change Order. However, as soon as said estimated costs are available, they will be made a part of the Contract by Change Order or Supplement.

It is understood and agreed that the Contractor will be paid a fixed fee for the additional work provided by this Change Order, which fee is in the process of negotiation and will be agreed upon shortly. As soon as the fee is negotiated and agreed upon, it will be made a part of this Contract by Change Order or Supplement.

It is further understood and agreed that the work added hereby is part of the work agreed upon under this Contract and (except as otherwise herein expressly provided) shall be done under and in accordance with, all applicable terms and conditions of the Contract, as amended.

The supplies, equipment and services to be obtained by this Change Order are authorized by, are for the purpose set forth in, and are chargeable to the following procurement authority (and such other procurement authority as may hereafter be added by amendment), the available bal-

ances of which are sufficient to cover the cost of same:  
5-60510 P120 A212/41005.

If the foregoing is acceptable to you, will you kindly so indicate by executing the original and the two inclosed copies of this Change Order, retaining the copy marked "duplicate" for your files, and returning the original and triplicate to this office within five days of the receipt of [fol. 1690] this Change Order by you, thereby constituting this Change Order a contract for the purposes herein stated:

For the Chief of Ordnance:

Very truly yours,

M. B. CHATFIELD,  
Lt. Col., Ord. Dept.,  
Contracting Officer.

Accepted Mar. 24, 1944.

THE UNITED STATES CARTRIDGE  
COMPANY,

By J. M. OLIN,  
Authorized Officer.

[fol. 1691] A. Early in March the St. Louis Ordnance Depot they had here found themselves very crowded with various war material that had been sent in here. And they came to the United States Cartridge Company and asked if we couldn't help them out. So we made this Supplement 17 that is dated in March; and in a six months period, about March 15th to September 15th, we set aside some space in Building 101 to rehabilitate many carloads of various kinds of automotive equipment, and picks and shovels. And it seemed when they would vacate premises they would leave the equipment, and the Ordnance Department came in and picked that up and threw it in a box car and sent it in. And they would open a car and the officers would decide what was salvageable and what was junk. And the junk they would set aside and the rest of it used possibly to try to repair and put it back in order.

Q. So, briefly, this Contract Change Order No. 17 provided for you to do certain work on miscellaneous used equipment of the army which the army had and had been using? A. That is correct.

Q. And you did that at the St. Louis Ordnance plant?

A. Yes, sir. Really some of that they told me wasn't even used. They would sometimes get—

Mr. Bond: Object to what they told him.

The Court: Sustained.

Q. It was material and equipment which was in the possession of the army and turned over to you to work on? [fol. 1692] A. That is right.

Mr. McRoberts: That is all.

Mr. Bond: That is all. No cross examination.

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HARRY P. MILLER,

previously sworn, was recalled for further examination on behalf of defendant, as follows:

Direct Examination by Mr. McRoberts:

Q. Mr. Miller, will you testify from your records which of the plaintiffs spent any part of their time while they were working for the United States Cartridge Company on or in connection with the work mentioned by Defendant's Exhibit 26, about which Mr. Casteel has just testified, giving the period during which these plaintiffs were assigned to that particular work? I think there were only a couple of them.

Mr. Bond: Object, it is incompetent, irrelevant and immaterial.

The Court: Admitted subject to the objection.

A. Two of the plaintiffs; J. C. Reeves worked in this building on this repair work. Reeves worked from 4/17/'44, to 3/10/'45 in this building.

Q. Doing safety work in connection with this repair?

A. Yes, sir, in connection with the repair. The other man, J. S. Schneider, worked in this building from 8/21/44 to 2/26/45 doing safety work in connection with this repair, in the repair depot.

[fol. 1693] Mr. McRoberts: That is all.

Mr. Bond: That is all.

Mr. Bond: That is the case, Your Honor.

Mr. McChesney: How much time are you going to give to file a brief?

The Court: Anybody going to file a brief?

Judge Bond: I would like to.

Mr. McChesney: Maybe Your Honor is ready to decide without a brief.

The Court: Have you intervened?

Mr. McChesney: No, I haven't intervened. I want to ask leave to file a brief on the interpretations, that may affect the public interest, that is all, as amicus curiae, if Your Honor wants to make an order giving me so much time.

Judge Bond: No objection.

The Court: What time do you want?

Judge Bond: I need a little more than the ordinary time. How about giving me until August 20th?

The Court: That is all right as far as I am concerned.

Mr. McRoberts: Could we have time to reply to his brief?

Judge Bond: I think both briefs should come in at the same time.

\* The Court: Whatever time is given, he will be given the same time. What time do you want?

Mr. McRoberts: If you will give me—

[fol. 1694] Judge Bond: How much time after you get mine do you want? I asked until August 20th. I probably will get it in a little before that time.

Mr. McRoberts: Two weeks after.

The Court: Judge Bond will be given to the 20th of August to file his brief, and you may have fifteen days after you received his brief.

Judge Bond: And may I have ten days to reply?

The Court: Yes, sir.

The Court: What time do you want, Mr. McChesney?

Mr. McChesney: About thirty days.

The Court: That is August 11th, that is Sunday. It will be August 13th.

The Court: Taken as submitted. Announce an indefinite recess.

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#### Conclusion of Testimony and Proceedings in This Cause.

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#### Certificate of Court Reporter:

I, Albert O. Phelan, do hereby certify that beginning July 8, 1946, I reported in shorthand accurately as possible the proceedings in this cause, and the above and foregoing is a true and complete transcript thereof.

ALBERT O. PHELAN,  
Court Reporter.

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[fol. 1695] Findings of Fact and Conclusions of Law.  
(Filed May 19, 1947.)

In the United States District Court for the Eastern  
Division of the Eastern Judicial District  
of Missouri.

R. M. Powell, et al.,

Plaintiffs,

v.

The United States Cartridge Com-  
pany, a corporation,

Defendant.

Court Room No. 1.  
Civil Action No. 3597.

This cause came on for trial and the Court having heard  
the evidence and considered the briefs and arguments of  
counsel finds the facts and states its conclusions of law as  
follows:

Findings of Fact.

1. That defendant, the United States Cartridge Company, is a corporation duly organized and existing and licensed to do business in the State of Missouri.
2. That at all the times referred to in the first amended complaint said defendant was engaged in the operation of a munitions plant in the City of St. Louis, State of Missouri in the Eastern Judicial District of Missouri, known as the St. Louis Ordnance Plant, wherein it manufactured small arms ammunition suitable for rifles and machine guns for the United States of America; that it manufactured said ammunition as an independent contractor under a so-called cost-plus-fixed fee contract intended for the use of the military forces of the United States and its allies, and intended for transportation in interstate commerce to points outside the State of Missouri, and that said ammunition and by-products thereof were transported in interstate commerce and that said defendant was engaged in commerce and in the production of goods [fol. 1696] for commerce within the meaning of the Fair Labor Standards Act of 1938, and that defendant was subject to the provisions of said Act and that said defendant was an employer within the meaning of said Act.

3. That the plaintiffs and each of them were employed by said defendant in the Safety Department of said plant and were while so employed engaged in the production of goods for interstate commerce within the meaning of the Fair Labor Standards Act of 1938.

4. That plaintiffs and each of them were so employed by defendant for the respective periods of time and at the base rates of pay alleged in the paragraphs numbered 1 to 59 inclusive of the first amended complaint herein, and that they all performed similar duties and were similarly situated within the meaning of Section 16 (b) of said Act.

5. That the services and duties performed by the plaintiffs and each of them were necessary to and interwoven with the interstate commerce business of the defendant, and were necessary and contributed to and were interwoven with the production of goods for interstate commerce by the defendant and tended to and did prevent work stoppages and loss of man hours in production and were an essential and necessary part of the manufacturing operations carried on by defendant, and were essential to the production of the ammunition produced by defendant.

6. That defendant failed to prove as to any of the plaintiffs that any substantial exercise of discretion and independent judgment was required of them in the performance of their duties, and failed to prove that any of the plaintiffs were employed in an administrative capacity, as that term is defined and delimited by the Regulations of the Administrator, and giving due weight to the interpretations of said regulations by the Administrator the Court finds that none of the plaintiffs were exempted as administrative employees.

[fol. 1697] 7. That those plaintiffs who were employed as Assistant Chief Safety Engineers and Assistant Staff Supervisors were not exempted as executive employees because no such exemption was pleaded as to them in the defendant's answer, and also because defendant failed to prove that they or any of them customarily and regularly exercised discretionary powers in the performance of their duties, or that they had authority to hire or fire other employees, or that their suggestions and recommendations as to the hiring or firing and as to the advancement and

promotion or other change of status of other employees were given particular weight, as specified in the Administrator's Regulations, and defendant failed to prove that these plaintiffs or any of them were employed in a bona-fide executive capacity, as defined and delimited in the Administrator's Regulations, and the Court therefore finds that none of the plaintiffs were exempted as executive employees.

8. That plaintiffs and each of them worked total actual hours, as shown on summaries prepared and furnished by defendant and received in evidence as plaintiffs' Exhibits A-1 to A-59 respectively, in each pay period there shown, and to the extent said hours exceeded forty hours in each or any week same were in excess of the applicable maximum prescribed by Section 7 of the Act; and plaintiffs and each of them are entitled to be compensated therefore at the rate of one and one-half times the regular rate at which they were respectively employed, and said exhibits constitute a sufficient basis for the computation of overtime pay due to each of the plaintiffs.

9. That the lunch period of one-half hour each day was compensable time, and that defendant improperly and unlawfully deducted this one-half hour on the summaries prepared by it as aforesaid, and which were received in evidence as aforesaid as plaintiffs' Exhibits A-1 to A-59, commencing with the first pay period and including the pay period ending October 10, 1943, and the Court finds that plaintiffs' Exhibits B-1 to B-59 wherein this one-half [fol. 1698] hour is added to the actual hours reported in defendant's summaries, correctly reflect the actual hours worked by plaintiffs and each of them, and correctly compute the claim of each plaintiff.

10. That the salaries paid to plaintiffs were base pay for a forty hour week, and plaintiffs are entitled to be compensated for all hours worked in excess thereof at one and one-half times the regular hourly rate, and that the proper method of computing the regular hourly rate is to divide the weekly wage by 40, and the proper method of computing the overtime is to multiply the hours worked in each pay period in excess of forty by one and one-half times the regular hourly rate computed as above stated, and the

Court further finds that the computations made in plaintiffs' Exhibits B-1 to B-59, received in evidence, are correctly computed, and that the sum of columns 6 and 7 of said exhibits correctly state the total overtime compensation lawfully due to each plaintiff.

11: That the defendant has failed to pay to plaintiffs, or to any of them, the overtime as above computed, or any overtime compensation whatsoever.

#### Conclusions of Law.

1. That at all times referred to in the evidence herein defendant was engaged in commerce and in the production of goods for commerce and was an employer within the meaning of the Fair Labor Standards Act of 1938.

2. That during their respective periods of employment plaintiffs and each of them were engaged in the production of goods for commerce within the meaning of said Act.

3. That none of the plaintiffs are exempted from the benefits of the Act under any provision of the Act or under any Regulation of the Administrator, either on the ground that they were employed in an administrative capacity or on the ground that they were employed in an executive capacity, or for any other reason.

[fol. 1699] 4. The salaries received by plaintiffs were payment for a forty hour week, and all hours worked in excess thereof are compensable overtime to be computed by the following method, to-wit: multiply the monthly pay by twelve and divide the result by fifty-two, thus obtaining the weekly wage; divide this weekly wage by forty, thus obtaining the regular hourly rate; multiply the hours worked in excess of forty by one and one-half times this regular hourly rate and the result is the overtime compensation due. Add to this result an equal amount as liquidated damages and the result is the total amount of the judgment which each plaintiff is entitled to recover.

5. That the provision of the Fair Labor [Standard] Act for the payment of liquidated damages and attorney's fee is compensatory in character and not penal, and that in the absence of holdings to the contrary by the Missouri courts, the Court concludes that the Five Year Statute of Limita-

tions of the State of Missouri applies to the causes of action at bar, and that the cause of action of none of the plaintiffs is barred by any Statute of Limitations.

6. That there shall also be assessed against defendant an attorney's fee in the sum of Twenty Four Thousand Six Hundred Twenty-Five Dollars (\$24,625.00) to be paid by defendant to Thomas Bond, plaintiffs' attorney of record.

7. That the attorney for plaintiffs prepare and submit the judgment order for entry.

GEO. H. MOORE,  
United States District Judge.

Entered at St. Louis, Missouri, this 19th day of May, 1947.

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[fol. 1700]

Judgment.

(Filed May 19, 1947.)

In the United States District Court  
For the Eastern Division of the Eastern  
Judicial District of Missouri.

R. M. Powell, et al.,

Plaintiffs,

v.

The United States Cartridge  
Company, a corporation,

Defendant.

} Court Room No. 1.  
Civil Action No. 3597.

Pursuant to the findings of fact and the conclusions of law filed herein,

It is Ordered, Adjudged and Decreed that judgment be entered herein in favor of each plaintiff and against defendant in the following amounts and that to each amount an equal amount be added as liquidated damages, to-wit:

Plaintiff	Unpaid Over-time Compensation	Liquidated Damages	Total Judgment
R. M. Powell . . . . .	\$1232.46	\$1232.46	\$2464.92
Arthur C. Kropp . . . . .	3296.51	3296.51	6593.02
F. N. Harris . . . . .	2550.70	2550.70	5101.40
J. M. Tyler . . . . .	1419.37	1419.37	2838.74
J. C. Marshall . . . . .	279.86	279.86	559.72
A. M. McCling . . . . .	878.33	878.33	1756.66
G. H. Bentine . . . . .	2064.87	2064.87	4129.74
J. Reeves . . . . .	3078.05	3078.05	6156.10
H. Hahn . . . . .	2207.64	2207.64	4415.28
N. W. Myers . . . . .	687.39	687.39	1374.78
B. J. Ludwig . . . . .	4506.97	4506.97	9013.94
E. L. Stockho . . . . .	3874.19	3874.19	7748.38
W. B. Niedringhaus . . . . .	4163.69	4163.69	8327.38
W. Stutz . . . . .	3321.97	3321.97	6643.94
S. P. Coley . . . . .	2407.42	2407.42	4814.84
[fol. 1701]			
L. W. Trimble . . . . .	3423.95	3423.95	6847.90
Robert M. Stewart . . . . .	3082.48	3082.48	6164.96
B. H. Hargate . . . . .	3873.17	3873.17	7746.34
J. S. Schneider . . . . .	1700.70	1700.70	3401.40
W. Gorg, Jr. . . . .	871.67	871.67	1743.34
B. M. Casey . . . . .	544.01	544.01	1088.02
A. H. Erickson . . . . .	1027.74	1027.74	2055.48
E. Maher . . . . .	2673.95	2673.95	5347.90
E. Hoskins . . . . .	2088.29	2088.29	4176.58
F. P. Knight . . . . .	1952.03	1952.03	3904.06
R. A. Westra . . . . .	1138.59	1138.59	2277.18
D. F. Bateman . . . . .	926.40	926.40	1852.80
A. Herman . . . . .	659.36	659.36	1318.72
G. Burmeister . . . . .	1690.10	1690.10	3380.20
G. B. Darby . . . . .	2572.05	2572.05	5144.10
R. E. Jenniches . . . . .	703.93	703.93	1407.86
J. J. Schwartz . . . . .	1595.14	1595.14	3190.28
A. C. Kemp . . . . .	3713.28	3713.28	7426.56
B. Yancey . . . . .	2082.05	2082.05	4164.10
J. D. Cavanagh . . . . .	2629.64	2629.64	5259.28
W. F. O'Mara . . . . .	5084.61	5084.61	10169.22
H. Carbone . . . . .	651.83	651.83	1303.66

Plaintiff	Unpaid Over-time Compensation	Liquidated Damages	Total Judgment
W. A. Broad.....	466.94	466.94	933.88
C. L. Valei.....	3230.80	3230.80	6461.60
M. Malloy.....	640.47	640.47	1280.94
R. Barnett.....	3385.72	3385.72	6771.44
W. Hirschberger.....	2075.75	2075.75	4151.50
F. Connell.....	1644.28	1644.28	3288.56
Floy L. Jennings.....	2246.11	2246.11	4492.22
S. Cook.....	2603.49	2603.49	5206.98
C. Champion.....	3102.61	3102.61	6205.22
[fol. 1702]			
D. Burke.....	731.59	731.59	1463.18
W. C. Viehmann.....	1482.62	1482.62	2965.24
F. M. Kercheval.....	3147.78	3147.78	6295.56
G. Cruce.....	792.55	792.55	1585.10
R. Baxter.....	579.18	579.18	1158.36
N. C. Walther.....	2218.31	2218.31	4436.62
G. Gillen.....	1346.58	1346.58	2693.16
J. Vollbrecht.....	1104.53	1104.53	2209.06
R. J. Peterson.....	3977.92	3977.92	7955.84
J. DeLargy.....	2006.87	2006.87	4013.74
C. C. Brace.....	1393.17	1393.17	2786.34
S. F. Peters.....	689.24	689.24	1378.48
A. Lockhart.....	3604.82	3604.82	7209.64

It is further Ordered, Adjudged and Decreed that in addition to the above amounts plaintiffs have judgment against defendant for their attorney's fee in the sum of Twenty Four Thousand Six Hundred Twenty-five Dollars (\$24,625.00), and that said sum be paid by defendant to Thomas Bond, plaintiffs' attorney of record, and that plaintiffs recover their costs.

GEO. H. MOORE,  
United States District Judge.

Entered at St. Louis,  
Missouri, this 19th day  
of May, 1947.

[fol. 1703] (Motion of Defendant for New Trial.)

(Filed May 29, 1947.)

Now comes The United States Cartridge Company, defendant in the above entitled cause, and moves this Court for a new trial on all of the issues in the said cause, and for a rehearing of the said issues, and for an order opening the judgment heretofore, on May 19, 1947, entered in the said cause, and that the Court shall thereupon take additional testimony in the said cause, amend the Findings of Fact and Conclusions of Law entered herein on May 19, 1947, or make new findings and conclusions, and for an order directing the entry of a new judgment herein, for the following reasons, viz.:

1. On Wednesday, May 14, 1947, the Portal-to-Portal Act of 1947, having been theretofore duly enacted by the Congress of the United States, was approved and signed by the President of the United States, and upon said day became a law of the United States, only five days prior to the signing and entry herein, on May 19, 1947, of the Findings of Fact and Conclusions of Law and Judgment. The said Portal-to-Portal Act of 1947, by its terms and provisions, expressly modified and amended the Fair Labor Standards Act of 1938, as amended, upon which the [fol. 1704] alleged causes of action described in plaintiffs' First Amended Complaint are based, limiting, modifying and restricting certain of the rights granted to plaintiffs by said Fair Labor Standards Act of 1938, as amended, authorizing the defendant to plead and prove as a defense and bar to the alleged causes of action described in the said First Amended Complaint certain facts which did not constitute a defense or bar thereto prior to the said Portal-to-Portal Act of 1947, defining and limiting the jurisdiction of this Court with respect to the alleged causes of action described in said First Amended Complaint, and granting to this Court certain discretion with respect to the awarding of liquidated damages which this Court did not possess prior thereto. Although the defendant did not have time nor opportunity between May 14, 1947, when said Portal-to-Portal Act of 1947 became a law, and May

19, 1947, the date of the entry of the Findings of Fact and Conclusions of Law and Judgment herein, to call said Act and its effect upon the present proceedings to the attention of the Court, and to plead and to prove certain facts which in and by said Act are made a complete defense and bar to this proceeding, nevertheless said Act became and was binding upon this Court, and all of the parties to this proceeding, and the Findings of Fact and Conclusions of Law and the Judgment made and entered herein violate and are contrary to the provisions of said Act.

2. Plaintiffs failed to plead and prove that (a) during the one-half hour lunch periods and (b) during the time prior to the beginning of and following the ending of plaintiffs' regular working shifts, plaintiffs, or any of them, engaged in any activity which was compensable by either

(1) an express provision of a written or non-written contract in effect, at the time of such activity, between plaintiffs, or any of them, their or his agent, or collective bargaining representative and the defendant; or

[fol. 1705] (2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such plaintiffs were employed, covering such activity, not inconsistent with a written or non-written contract, in effect at the time of such activity, between such plaintiffs, or any of them, their or his agent, or collective bargaining representative and the defendant,

and that such activity was engaged in during the portion of the day with respect to which it was so made compensable; all as provided in Section 2, Subsections (a) and (b) of said Portal-to-Portal Act of 1947, and hence the Court erred in making and entering said Findings of Fact Nos. 8, 9 and 10, which are erroneous and contrary to the evidence, the weight of the evidence, and the law, and the said Judgment, which is, pro tanto, excessive, with respect to each of the plaintiffs, and contrary to law.

3. The Court erred in including in the said Judgment, with respect to each of the plaintiffs, an allowance of over-

time compensation, plus liquidated damages, for (a) the one-half hour lunch periods and (b) the time prior to the beginning of and following the ending of plaintiffs' regular working shifts, contrary to the provisions of Section 2, Subsections (a) and (b) of the Portal-to-Portal Act of 1947, because there was no "activity", within the meaning of said Act, on the part of any plaintiff during such lunch periods or during the time prior to the beginning of and following the ending of plaintiffs' regular working shifts, and, if there was any such activity on the part of plaintiffs, or any of them, during such lunch periods or time before and after shifts it was not an activity which was compensable by either—

[fol. 1706] (1) an express provision of a written or non-written contract in effect, at the time of such activity, between such plaintiffs, or any of them, their or his agent, or collective-bargaining representative and the defendant, or

(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such plaintiffs were employed, covering such activity, not inconsistent with a written or non-written contract, in effect at the time of such activity, between such plaintiffs, or any of them, their or his agent, or collective-bargaining representative and the defendant,

and it was not an activity which was engaged in during the portion of the day with respect to which it was so made compensable. (See affidavit of Harry P. Miller in support hereof.)

4. The Court erred in making and entering said Findings of Fact and Conclusions of Law and Judgment, in the application of the overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended, and in determining the time for which the defendant employed the plaintiffs, and each of them, by counting more time than that during which the plaintiffs engaged in activities which were compensable within the meaning of Subsections (a) and (b) of Section 2 of the Portal-to-Portal Act, contrary to and in violation of the provisions of Subsec-

tion (e) of Section 2 of said Act, in that the Court allowed overtime compensation, plus liquidated damages, for (a) the one-half hour lunch periods and (b) the time prior to the beginning of and following the ending of plaintiffs' regular working shifts. (See affidavit of Harry P. Miller, in support hereof.)

5. The Court erred in making and entering the said Judgment, in that under the provisions of Subsection (d) of Section 2 of the Portal-to-Portal Act of 1947 the Court [fol. 1707] had no jurisdiction to allow overtime compensation, plus liquidated damages, for (a) the one-half hour lunch periods or (b) the time prior to the beginning and following the ending of plaintiffs' regular shifts, because, to the extent that the action or proceeding seeks to enforce such liability or impose such punishment, it does so with respect to an activity which was not compensable under Subsections (a) and (b) of Section 2 of the said Act. (See affidavit of Harry P. Miller in support hereof.)

6. The Court erred in making and entering said Findings of Fact and Conclusions of Law and Judgment, in that each and every act or omission complained of in the First Amended Complaint was done or omitted to be done in good faith in conformity with and in reliance on administrative regulations, orders, rulings, approvals or interpretations, of one or more agencies of the United States, and, under the provisions of Section 9 of the Portal-to-Portal Act of 1947, such facts, if established, constitute a bar to this action or proceeding. During the five day interval between May 14, 1947, the date when said Portal-to-Portal Act of 1947, became a law, and May 19, 1947, the date of entry of said Findings of Fact and Conclusions of Law and Judgment, defendant did not have time or opportunity to plead or to prove the foregoing facts which defendant now offers and requests leave of Court so to do. (See affidavit of Harry P. Miller in support hereof.)

7. The Court erred in making and entering said Findings of Fact and Conclusions of Law and Judgment, in that each and every act or omission complained of in the

First Amended Complaint was done or omitted to be done in good faith in conformity with and in reliance on administrative practices or enforcement policies of one or more agencies of the United States with respect to the class of employers to which defendant belongs, and, under the provisions of Section 9 of the Portal-to-Portal Act of [fol. 1708] 1947, such facts, if established, constitute a bar to this action or proceeding. During the five day interval between May 14, 1947, the date when said Portal-to-Portal Act of 1947, became a law, and May 19, 1947, the date of entry of said Findings of Fact and Conclusions of Law and Judgment, defendant did not have time or opportunity to plead or to prove the foregoing facts which defendant now offers and requests leave of court so to do. (See affidavit of Harry P. Miller in support hereof.)

8. The Court erred in making and entering said Findings of Fact and Conclusions of Law and Judgment, in that each and every act or omission giving rise to the present action was done or omitted to be done in good faith, and defendant had reasonable grounds for believing that such acts or omissions were not a violation of the Fair Labor Standards Act of 1938, as amended, and, under the provisions of Section 11 of the Portal-to-Portal Act of 1947, if the defendant shows such facts to the satisfaction of the Court, the Court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in Section 16. (b) of such Fair Labor Standards Act of 1938, as amended. During the five day interval between May 14, 1947, the date when said Portal-to-Portal Act of 1947, became a law, and May 19, 1947, the date of entry of said Findings of Fact and Conclusions of Law and Judgment, defendant did not have time or opportunity to show such facts to the satisfaction of the Court, but is now prepared and offers and requests leave of Court so to do. (See affidavit of Harry P. Miller in support hereof.).

9. The Court erred in finding (Finding of Fact No. 2) that the ammunition manufactured at the St. Louis Ordnance Plant was intended for transportation in interstate commerce to points outside of the State of Missouri, and

that said ammunition and by-products thereof were trans-  
[fol. 1709] ported in interstate commerce and that said defendant was engaged in commerce and in the production of goods for commerce within the meaning of the Fair Labor Standards Act of 1938, and that defendant was subject to the provisions of such Act.

10. The Court erred in finding (Finding of Fact No. 3) that the plaintiffs, and each of them, were engaged in the production of goods for interstate commerce within the meaning of the Fair Labor Standards Act of 1938.

11. The Court erred in finding (Finding of Fact No. 4) that the plaintiffs, and each of them, were employed by defendant at the base rates of pay alleged in Paragraphs Numbered 1 to 59, inclusive, of the First Amended Complaint herein.

12. The Court erred in finding (Finding of Fact No. 4) that plaintiffs, and each of them, all performed similar duties and were similarly situated within the meaning of Section 16 (b) of the Fair Labor Standards Act of 1938.

13. The Court erred in finding (Finding of Fact No. 5) that the services and duties performed by the plaintiffs, and each of them, were necessary to and interwoven with the interstate commerce business of the defendant, and were necessary to and contributed to and were interwoven with the production of goods for interstate commerce by the defendant.

14. The Court erred in finding (Finding of Fact No. 6) that defendant failed to prove as to any of the plaintiffs that any substantial exercise of discretion and independent judgment was required of them in the performance of their duties, and failed to prove that any of the plaintiffs were employed in an administrative capacity, as that term is defined and delimited by the Regulations of the Administrator, and that none of the plaintiffs were exempted as administrative employees.

[fol. 1710] 15. The Court erred in finding (Finding of Fact No. 7) that those plaintiffs who were employed as

Assistant Chief Safety Engineers and Assistant Staff Supervisors were not exempted as executive employees because no such exemption was pleaded as to them in the defendant's answer, and also because defendant failed to prove that they, or any of them, customarily and regularly exercised discretionary powers in the performance of their duties, or that they had authority to hire or fire other employees, or that their suggestions and recommendations as to the hiring or firing, and as to the advancement or promotion or other change of status of other employees were given particular weight, as specified in the Administrator's Regulations, and that defendant failed to prove that these plaintiffs, or any of them, were employed in a bona fide executive capacity, as defined and delimited in the Administrator's Regulations, and that none of the plaintiffs were exempted as executive employees.

16. The Court erred in finding (Finding of Fact No. 8) that plaintiffs, and each of them, worked total actual hours, as shown on summaries prepared and furnished by defendant and received in evidence as Plaintiffs' Exhibits A-1 to A-59, respectively, in each pay period there shown, and to the extent said hours exceeded forty hours in each week or any week same were in excess of the applicable maximum prescribed by Section 7 of the Act; and that plaintiffs, and each of them, are entitled to be compensated therefor at the rate of one and one-half times the regular rate at which they were, respectively, employed, and that said Exhibits constitute a sufficient basis for the computation of overtime pay due to each of the plaintiffs.

17. The Court erred in finding (Finding of Fact No. 9) that the lunch period of one-half hour each day was compensable time, and that defendant improperly and un[fol. 1711] lawfully deducted this one-half hour on the summaries prepared by it, as aforesaid, and received in evidence as Plaintiffs' Exhibits A-1 to A-59, commencing with the first pay period and including the pay period ending October 10, 1943, and that Plaintiffs' Exhibits B-1 to B-59, wherein this one-half hour is added to the actual

hours reported in defendant's summaries, correctly reflects the actual hours worked by plaintiffs, and each of them, and correctly compute the claim of each plaintiff.

18. The Court erred in finding (Finding of Fact No. 10) that the salaries paid the plaintiffs were base pay for a forty-hour week, and that plaintiffs are entitled to be compensated for all hours worked in excess thereof at one and one-half times the regular hourly rate, and that the proper method of computing the regular hourly rate is to divide the weekly wage by 40, and the proper method of computing the overtime is to multiply the hours worked in each pay period in excess of forty by one and one-half times the regular hourly rate computed as above stated, and that the computations made in Plaintiffs' Exhibits B-1 to B-59, received in evidence, are correctly computed, and that the sum of columns 6 and 7 of said exhibits correctly state the total overtime compensation lawfully due to each plaintiff.

19. The Court erred in concluding (Conclusions of Law No. 1) that at all times referred to in the evidence herein defendant was engaged in commerce and in the production of goods for commerce, and was an employer within the meaning of the Fair Labor Standards Act of 1938.

20. The Court erred in concluding (Conclusions of Law No. 2) that during their respective periods of employment plaintiffs and each of them were engaged in the production of goods for commerce within the meaning of said Act.

[fol. 1712] 21. The Court erred in concluding (Conclusions of Law No. 3) that none of the plaintiffs are exempted from the benefits of the Act under any provisions of the Act or under any Regulations of the Administrator, either on the ground that they were employed in an administrative capacity or on the ground that they were employed in an executive capacity, or for any other reason.

22. The Court erred in concluding (Conclusions of Law No. 4) that the salaries received by plaintiffs were payment for a forty-hour week, and all hours worked in excess thereof are compensable overtime to be computed

by the following method, to-wit: multiply the monthly pay by twelve and divide result by fifty-two, thus obtaining the weekly wage; divide this weekly wage by forty, thus obtaining the regular hourly rate; multiply the hours worked in excess of forty by one and one-half times this regular hourly rate and the result is the overtime compensation due; add to this result an equal amount as liquidated damages and the result is the total amount which each plaintiff is entitled to recover.

23. The Court erred in concluding (Conclusions of Law No. 5) that the provision of the Fair Labor Standards Act for the payment of liquidated damages and attorney's fee is compensatory in character and not penal, and that in the absence of holdings to the contrary by the Missouri courts, the Five Year Statute of Limitations of the State of Missouri applies to the causes of action at bar, and that the cause of action of none of the plaintiffs is barred by any Statute of Limitations.

24. The Court erred in concluding (Conclusions of Law No. 6) that there shall also be assessed against defendant an attorney's fee in the sum of Twenty Four Thousand [fol. 1713] Six Hundred Twenty-Five Dollars (\$24,625.00) to be paid by defendant to Thomas Bond, plaintiffs' attorney of record.

25. The Court erred in ordering, adjudging and decreeing that judgment be entered herein in favor of each plaintiff and against defendant, instead of in favor of the defendant and against each plaintiff.

26. The Court erred in ordering, adjudging and decreeing that judgment be entered herein in favor of each plaintiff and against defendant in the respective amounts set forth for each plaintiff under the caption "Unpaid Over-time Compensation", and in ordering, adjudging and decreeing that to each such amount an equal amount be added as liquidated damages, as set forth opposite the name of each plaintiff under the caption "Liquidated Damages", and in ordering, adjudging and decreeing that judgment be entered herein in favor of each plaintiff and against defendant in the respective amounts set forth op-

posite the name of each plaintiff under the caption "Total Judgment", and in ordering, adjudging and decreeing that in addition to the above amounts plaintiffs have judgment against defendant for their attorney's fee in the sum of Twenty Four Thousand Six Hundred Twenty-five Dollars (\$24,625.00), and that said sum be paid by defendant to Thomas Bond, plaintiffs' attorney of record, and that plaintiffs recover their costs.

27. The Court erred in the trial of said cause in admitting and receiving in evidence, over the objection of defendant, incompetent, irrelevant and immaterial evidence offered by the plaintiffs.

28. The Court erred in the trial of said cause in failing and refusing to admit and receive in evidence competent, relevant and material evidence offered by defendant.

[fol. 1714] 29. The said judgment is contrary to law, the evidence and the weight of the evidence.

30. The said judgment is for the wrong party, being in favor of the plaintiffs and against the defendant, when it should have been in favor of the defendant and against the plaintiffs.

Wherefore, the defendant prays for an order granting to the defendant a new trial on all of the issues in the aforesaid cause, and for a rehearing of the issues, and for an order opening the judgment heretofore on May 19, 1947, entered in the said cause, and that the Court shall thereupon retry or rehear all of the issues in said cause, or said portion of the said issues as it may be necessary and proper to retry or rehear, and that the Court shall thereupon take additional testimony in the said cause, withdraw, cancel and vacate the Findings of Fact and Conclusions of Law entered herein on May 19, 1947, or amend the same, or make new findings and conclusions, and for an order directing the entry of a new judgment herein.

Oral argument of this motion is hereby requested pursuant to Rule VIII c. (1) of the General Rules of this Court.

# MICRO TRADE

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Plaintiffs are now advised by the filing of this motion; affidavit in support thereof and brief in support thereof on this 29th day of May, 1947.

RHODES E. CAVE,  
R. H. McROBERTS,  
W. C. CONNETT IV,  
1630 Boatmen's Bank Building,  
St. Louis 2, Missouri,  
Attorneys for Defendant The United  
States Cartridge Company.

BRYAN, CAVE, MCPHEETERS & McROBERTS,  
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St. Louis 2, Missouri,  
Of Counsel.

[fol. 1715] Receipt of a copy of the foregoing Defendant's Motion for a New Trial, and Affidavit in Support Thereof, and Brief in Support Thereof, is hereby acknowledged this 29th day of May, 1947.

THOMAS BOND,  
Attorney for Plaintiffs.

I hereby certify that service of the foregoing Defendant's Motion for a New Trial, and Affidavit in Support Thereof, and Brief in Support Thereof, was made upon L. Metcalfe Walling, Amicus Curiae, by mailing a copy thereof to his attorney Reid Williams, Regional Attorney, Department of Labor, at his last known address, 3000 Fidelity Building, Kansas City 6, Missouri, on the 29th day of May, 1947.

W. C. CONNETT IV.

[fol. 1716]      Affidavit of Harry P. Miller  
                  In Support of Defendant's Motion  
                  for a New Trial.

United States of America }  
State of Missouri         } ss.  
City of St. Louis }

HARRY P. MILLER, being duly sworn, on his oath states as follows:

1. My name is Harry P. Miller and I live in the City of St. Louis, Missouri. I am now and have been since July 17, 1944, Director of Personnel of The United States Cartridge Company, defendant in the above entitled cause; from July 15, 1942, to July 17, 1944, I was Assistant Personnel Director of the said defendant, and from February 2, 1942, to July 15, 1942, I was Personnel Supervisor, acting as Assistant Director of Personnel, of the said defendant.
2. It was a part of the duties of my employment with the defendant in the various capacities as aforesaid to be familiar with and participate in the fixing of wage and salary schedules and ranges, making amendments and changes therein, getting requisite approvals and reimbursement therefor, and, in general, to be thoroughly familiar with the practices and policies of the defendant company in connection with wage and salary matters, including the salaries paid to the plaintiffs, and each of them, in the present case, and to be familiar with and participate [fol. 1717] in dealings between the defendant and various agencies of the United States Government in connection with such wage and salary matters, the authorization and approval thereof and compliance by the defendant with the various administrative regulations, orders, rulings, approvals and interpretations of various agencies of the United States and the administrative practices and enforcement policies of such agencies with respect to the class of employers to which the defendant belonged.
3. It was also a part of my duties to know and be familiar with the activities of the plaintiffs, and each of them, while they were employed by the defendant, and the writ-

ten or non-written contracts in effect, at the time of such activities, between such plaintiffs, their agents or collective-bargaining representative and the defendant, and the customs or practices in effect, at the time of such activities, at the establishment where each plaintiff was employed, with respect to such activities.

Re Grounds 3, 4, and 5 of Defendant's Motion for  
New Trial.

4. On information and belief, during the entire time that plaintiffs, and each of them, were employed by the defendant, with the possible exception of two occasions involving not more than three or four of the plaintiffs, the plaintiffs, and each of them, were not ordered, directed, instructed or required to engage in any of the duties incident to their employment, nor to perform any other work, labor or services for the defendant, and none of the plaintiffs did or performed any such work, labor or services, during the one-half hour lunch periods allowed to each of said plaintiffs, nor during the time prior to the beginning of and following the ending of plaintiffs' regular working shifts. The said lunch periods were "free" time when the plaintiffs, and each of them, were free from the direction, supervision and control of the defendant, and which plaintiffs, and each of them, were privileged to use for such purposes [fol. 1718] as they might see fit, including leaving the buildings and grounds of the St. Louis Ordnance Plant, if they so desired. The time prior to the beginning of and following the ending of plaintiffs' regular working shifts represented time after punching in on their time cards before their shifts and before punching out on their time cards after their shifts, when plaintiffs, and each of them, were in, on or about the premises of the St. Louis Ordnance Plant by their own choice, for their own convenience and not for the convenience of or pursuant to any orders, directions or instructions of the defendant. No activity in which plaintiffs, or any of them, engaged during such lunch periods or during the time prior to the beginning of and following the ending of plaintiffs' regular working shifts was compensable under either (1) an express provision of a written or non-written contract in effect, at the time of such activity, between such plaintiffs, or any

of them, their or his agent, or collective-bargaining representative and the defendant, or (2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such plaintiffs were employed, covering such activity, not inconsistent with a written or non-written contract, in effect at the time of such activity, between such plaintiffs, or any of them, their or his agent, or collective-bargaining representative and the defendant, and no such activity was engaged in by plaintiffs, or any of them, during the portion of the day with respect to which any such activity was so made compensable.

5. Plaintiffs' Exhibits A-1 to A-59, both inclusive, do not purport to reflect and do not correctly reflect the actual hours worked by plaintiffs, or any of them, but only the elapsed time between the punching in and the punching out of plaintiffs' time cards, computed in the manner described on the witness stand by defendant's witness John [fol. 1719] L. Kelly. Such elapsed time shown on Plaintiffs' Exhibits A-1 to A-59, both inclusive, includes free time prior to the beginning of and following the ending of plaintiffs' regular working shifts, and also includes one-half hour lunch periods subsequent to October 11, 1943, during which free time and lunch periods plaintiffs performed no work, labor or services for the defendant, and engaged in no compensable activity for defendant. Plaintiffs' Exhibits B-1 to B-59, both inclusive, likewise do not correctly reflect the actual hours worked by plaintiffs, or any of them, but only the elapsed time between the punching in and the punching out of plaintiffs' time cards, computed as described by Mr. Kelly, plus the one-half hour lunch period prior to October 11, 1943. They also include free time prior to the beginning of and following the ending of plaintiffs' regular working shifts, and also include one-half hour lunch periods during the entire time of the employment of plaintiffs, and each of them, during which free time and lunch periods plaintiffs performed no work, labor or services for the defendant, and engaged in no compensable activity for defendant. Accordingly, in the application of the overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended, and in determining the time for which the defendant employed the plaintiffs, and each of them, on the basis of said Exhibits,

and in making and entering the judgment herein, the Court has counted more time than that during which the plaintiffs engaged in activities which were compensable, within the meaning of subsections (a) and (b) of Section 2 of the Portal-to-Portal Act.

Re Grounds 6, 7 and 8 of Defendant's Motion for a New Trial.

6. Each and every act of the defendant in classifying and treating the plaintiffs, and each of them, as exempt [fol. 1720] employees under the provisions of the Fair Labor Standards Act of 1938, as amended, and of the Regulations of the Administrator issued thereunder, and in requiring plaintiffs, and each of them, to work in excess of forty hours per week, and in failing to pay to the plaintiffs, and each of them, any overtime compensation for hours worked in excess of forty hours per week, was done or omitted to be done in good faith, in conformity with and in reliance on administrative regulations, orders, rulings, approvals or interpretations of one or more agencies of the United States, and in conformity with and in reliance on administrative practices or enforcement policies of one or more agencies of the United States with respect to the class of employers to which defendant belonged, in this, to-wit:

(a) Under the terms and provisions of the Contract No. W-ORD-491 between the defendant and the United States of America, defendant was entitled to reimbursement of the costs and expenses incurred in the operation of the St. Louis Ordnance Plant only "when approved in advance or subsequently ratified by the Contracting Officer", and the defendant was required to submit to the Contracting Officer detailed information with respect to the defendant's organization and methods, its executive and administrative personnel, together with a written statement of the duties of each person, and the administrative procedure to be followed by the defendant for the control and direction of the work, such data to be supplemented from time to time.

[fol. 1721] (b) Pursuant to said provisions of the contract defendant, prior to commencing manufacturing operations

at the St. Louis Ordnance Plant, furnished to the Contracting Officer, the duly and legally designated and authorized agent of the United States of America, and to the Ordnance Department, a department or division of the War Department of the United States of America, and to the said War Department, full and complete information with respect to the defendant's organization and methods, the costs and expenses of every character and description incurred and to be incurred in connection with the performance of said contract, charts showing the executive and administrative personnel of the defendant, and written statements of the duties of each person and the administrative procedure to be followed by the defendant for the control and direction of the work, copies of all wage scales, schedules, rates of pay, rate ranges and salaries for all employees of the defendant, including both hourly paid and salaried workers, and a statement of the policies to be followed by the defendant with respect to the payments for overtime and for lunch periods, and from time to time during the years while defendant operated said St. Louis Ordnance Plant, and while plaintiffs were employed by defendant, as changes, additions and modifications were made in said information; charts, written statements, wage scales, schedules, rates of pay, rate ranges, salaries and management policies, defendant furnished to said Contracting Officer, Ordnance Department, War Department, and other agencies of the United States of America, full, complete and detailed information with respect thereto, and defendant was required to obtain and receive, and did in fact obtain and receive, from said Contracting Officer, said Ordnance Department, said War Department, and said other agencies of the United States of America, approvals thereof. In addition, during the entire [fol. 1722] period of defendant's operations of the St. Louis Ordnance Plant, and the entire period of plaintiffs' employment, auditors, inspectors, agents and representatives of the Contracting Officer, of the said Ordnance Department, and of the said War Department, had full and complete access to all of the books, records and accounts of the defendant, and all of the defendant's operations in, on and about the St. Louis Ordnance Plant, and did in

fact constantly audit, inspect and examine such books and records, and inspect, test, examine and verify defendant's operations, including the complete records and accounts with respect to the plaintiffs, and each of them, their hours worked, the nature and character of the work performed, and the nature, method and amount of salaries paid to them for such services, and were at all times fully informed and advised with respect to all of defendant's activities in connection with the performance of said contract, and approved the same, with certain minor and insignificant exceptions, none of which related to the plaintiffs, their hours worked, or their compensation therefor, all of which exceptions were, in due course, subsequently approved.

(e) In spite of such full and complete information furnished by the defendant to and the actual inspection, check, verification and knowledge of, such Contracting Officer, Ordnance Department and War Department, of the hours worked by the plaintiffs, the nature and extent of the services performed, the method and amount of compensation paid them therefor, and the fact that defendant treated and classified plaintiffs, and each of them, as being exempt employees under the Fair Labor Standards Act of 1938, as amended, and paid them no overtime for any hours worked in excess of forty hours per week, [fol. 1723] neither said Contracting Officer, said Ordnance Department, nor said War Department, nor any other agency of the United States of America ever at any time questioned, objected to or indicated, directly or indirectly that the plaintiffs, or any of them, were not exempt employees under the provisions of the Fair Labor Standards Act of 1938, as amended, or that they were entitled to overtime compensation for hours worked in excess of forty hours per week, and by such silence acquiesced, approved, ratified and confirmed the acts and policies of the defendant with respect to these plaintiffs, and the defendant, in good faith, conformed with and relied upon such administrative approval.

7. More specifically, and without limiting the generality of the foregoing—

(a) Defendant, under date of October 7, 1941, sought and obtained the express written approval of the Ordnance Department of its proposed management policies with respect to payments for overtime and lunch periods, which policies provided that no payment for overtime should be made for salaried employees, classified as Executive, Administrative and Professional employees, who received more than \$200.00 salary per month, nor should payment at straight time or overtime rates be made for any lunch periods, except for hourly rated employees.

(b) Prior to making each salary payment to the plaintiffs, and each of them, for each pay period, the salary payroll, setting forth detailed and specific information with respect to each such payment, including the amount of such payment, the basis upon which such payment was computed, i. e., the number of hours worked or other proper basis; all deductions therefrom and a specific indication with respect to each employee as to whether or [fol. 1724] not each such employee was classified as exempt or non-exempt under the Fair Labor Standards Act, was submitted to the Ordnance Department for approval, whereupon each such salary payroll was examined and verified by representatives of the Ordnance Department, and each such payroll was specifically approved in writing by the duly authorized representative of the Ordnance Department, in accordance with a procedure established by an express order of the Secretary of War. In each case such salary payrolls for the periods involved in this litigation specifically indicated that the plaintiffs, and each of them, were classified, treated and being compensated as exempt employees under the provisions of the Fair Labor Standards Act.

(c) After said wage scales, schedules, rates of pay, rate ranges and salaries had been initially adopted by defendant and approved by the various agencies of the United States, there was made out for each employee, including plaintiffs, and each of them, when employed, a slip or "Employment Notice" furnishing certain information with respect to the terms of employment, and salary or other basis of payment, which slips or memorandum indicated

whether or not such employee was classified by defendant as exempt or non-exempt under the Fair Labor Standards Act. A copy of each such slip or memorandum was forthwith furnished to the Ordnance Department, and if the Ordnance Department approved of such employment, and the terms thereof, said slip or memorandum was retained in its files without further action. In the event the said Ordnance Department disapproved of such employment, or the terms thereof, such slip or memorandum would be returned to the defendant with an explanation as to the reasons for such disapproval. Following such initial employment each change in the salary rate or other basis of [fol. 1725] compensation for each employee, including plaintiffs, and each of them, was set forth on another slip or memorandum, giving detailed information with respect thereto, including a specific statement as to whether or not the employee was classified by defendant as exempt or non-exempt under the Fair Labor Standards Act, copies of which slip were likewise forthwith furnished to the Ordnance Department and a like procedure followed with respect to approval or disapproval thereof. The procedure above outlined was followed with respect to plaintiffs, and each of them; and the respective slips or memoranda indicated that plaintiffs, and each of them, were classified and treated by defendant as exempt employees under the provisions of the Fair Labor Standards Act, and in each case the said Ordnance Department approved such classification in the manner indicated above.

(d) Following the passage of the Economic Stabilization Act of October 2, 1942, and the promulgation of Executive Order No. 9250 on October 3, 1942, the wage and salary stabilization policy of the United States became effective as of October 3, 1942, which policy provided that individual increases were prohibited on and after October 3, 1942, for salaries in excess of \$5,000.00 per annum, and on and after October 27, 1942, for all salaries less than \$5000.00 per annum, without specific approval from the properly authorized Government agencies. In compliance with the requirements, regulations and instructions set forth in Ordnance Procurement Circular No. 94, dated

March 20, 1943, issued by the Office of the Chief of Ordnance, and covering employees of contractors at new ordnance facilities, including the St. Louis Ordnance Plant, the defendant submitted to the War Department, Wage Administration Agency, being the agency to which the said War Department, the National Labor Relations Board, and the Commissioner of Internal Revenue had duly delegated [fol. 1726] authority to rule upon all applications for wage and salary adjustments requiring prior approval, a list of all reimbursable jobs at the St. Louis Ordnance Plant, including each job held by the plaintiffs, and each of them, together with the actual rate or rate range for each such job, and the number of employees in such job, and a job description of each such job. In order to obtain the necessary approval for making individual salary increases the defendant, acting pursuant to specific instructions contained in Ordnance Procurement Circular No. 188, dated June 16, 1943, prepared and submitted to the Ordnance Department a written statement of the existing Plan of the company for the making of individual wage adjustments for three separate groups—exempt, non-exempt and hourly paid employees, as such Plan was in effect prior to October 27, 1942. Such Plan specifically set forth, under the general classification "Exempt Salary Jobs", and following the statement "The schedule of salary ranges for exempt job classifications in effect prior to October 27, 1942 is listed below:" the following information:

Code	Name	Salary Ranges Min. — Max.
843	Engineer Safety—Sr.	\$200 — \$250"

In addition, said Plan set forth other code numbers, all of the job classifications and salary ranges of various supervisory positions under which certain of the plaintiffs were from time to time classified, when not classified as safety engineers. Furthermore, said Plan made the specific statement that "exempt salary rated employees are not paid for overtime." This Plan was approved in writing, under date of September 17, 1943, by the said War Department, Wage Administration Agency. Thereafter

said Plan was also duly approved, in writing, by the Ordnance Department through its duly authorized Contracting Officer.

[fol. 1727] (e) Following the approval of said Plan, and continuing until the operations at said St. Louis Ordnance Plant ceased, every change in rates of pay, whether of hourly paid or salaried employees, and every promotion or transfer from one job to another, including every salary change for the plaintiffs, and each of them, and every promotion and transfer for the plaintiffs, and each of them, was first submitted by the defendant to the Ordnance Department of the United States by means of a slip or memorandum setting forth certain information with respect to the employee, his present job, rate and method of compensation, and the proposed change in job and/or in rate or method of compensation, each of said slips indicating whether or not the employee in question was exempt or non-exempt under the provisions of the Fair Labor Standards Act, and in the case of each of the plaintiffs affected by any such salary change, promotion or transfer, indicating that he was classified as an exempt employee under said Fair Labor Standards Act, and no such change in salary, promotion or transfer was put into effect until the Ordnance Department, after receipt of such slip, had approved the same and determined that such proposed change was in compliance with the various rules and regulations applicable thereto and with the aforesaid Plan.

(f) In addition, under date of August 19, 1943, the company, pursuant to the applicable rules and regulations, submitted through the Ordnance Department to said War Department, Wage Administration Agency, and also to the Small Arms Sub-office, Office of Chief of Ordnance, of the War Department, an agency created by the War Department to control and coordinate production, materials, policies, salaries and wages within and between the various employers engaged in the production of small arms ammunition for the War Department, a request for increases in the rate changes of various jobs, including an increase in the rate ranges for each of the jobs then

[fol. 1728] or thereafter held by each of the plaintiffs, describing each such job by the same code number and job description as had been previously used in the list of exempt jobs set forth in the aforesaid Plan; and pursuant to said request certain changes in the rate ranges for said jobs held by plaintiffs were approved by said War Department, Wage Administration Agency, under date of October 1, 1943, effective for exempt salaried employees on October 11, 1943.

(g) The above and foregoing are certain examples of administrative regulations, orders, rulings, approvals or interpretations of various agencies of the United States and of administrative practices or enforcement policies of such agencies with respect to the class of employers to which defendant belonged which affiant has been able to select from the files and records of defendant company in the short time available. It is believed that given reasonable opportunity to more closely examine such books and records, affiant will be able to produce and testify to or produce witnesses to testify to other instances in which specific regulations, orders, rulings, approvals, interpretations, practices or enforcement policies of such agencies have been obtained and followed.

8. Defendant acted in good faith and in conformity with and in reliance on the aforesaid administrative regulations, orders, rulings, approvals or interpretations of the said agencies of the United States and on the administrative practices or enforcement policies of such agencies with respect to the class of employers to which defendant belonged, and, upon a new trial of the foregoing cause, defendant will be able to plead and to prove such facts by competent, relevant, material and credible evidence.

[fol. 1729] 9. Defendant is prepared to show to the satisfaction of the Court that its act in classifying the plaintiffs, and each of them, as exempt under the Fair Labor Standards Act of 1938, as amended, and in failing to pay plaintiffs, and each of them, overtime compensation for hours worked in excess of forty hours per week, was in good faith, and that defendant had reasonable grounds for

believing that its said act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended.

And further affiant saith not.

HARRY P. MILLER.

Subscribed and sworn to before me this 29th day of May, 1947.

My commission expires July 4, 1949.

RUTH E. WEAKLY,

Notary Public.

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[fol. 1730] Affidavits on Behalf of Plaintiffs Opposing Defendant's Motion for a New Trial.

(Filed June 11, 1947.)

State of Missouri } ss.  
City of St. Louis }

F. N. HARRIS, A. C. KEMP, W. F. O'MARA, ARTHUR C. KROPP and F. P. KNIGHT, being duly sworn on their oath state that they are plaintiffs in the above entitled case and were employed by defendant in the Safety Department of the St. Louis Ordnance Plant as follows:

F. N. Harris from February 13, 1942 to March 10, 1945.

A. C. Kemp from December 23, 1941 to September 16, 1944.

W. F. O'Mara from May 2, 1942 to October 5, 1945.

Arthur C. Kropp from December 2, 1941 to April 7, 1945.

F. P. Knight from January 23, 1942 to June 1, 1944.

That they know the organization methods and the customs and practices that obtained at said plant, and they severally depose as follows:

1. That it is not true, as stated on information and belief in the affidavit of Harry P. Miller, heretofore filed herein, that the time before and after shift was not compensable, but, on the contrary, the facts are that it was the universal custom and invariable practice prevailing at said plant to compensate non-exempt employees for such time, and that the defendant corporation maintained a settled management policy for such payment to all non-exempt employees, including non-exempt salaried employees working on shifts, and the defendant corporation set up and maintained a formula for computing such time, said formula being as follows, to-wit: a tolerance period of 15 minutes before shifts was disregarded; periods in excess of this 15 minutes were counted; in computing the compensable portion of this time it was the practice to base the computation on one-tenth hour units and to disregard the odd minutes. For example, if an employee clocked in 16 minutes before shift he would be credited with 2/10ths of an hour and the odd 4 minutes disregarded. This practice and this formula was followed by the defendant in computing the actual hours of work of each of these plaintiffs. Plaintiffs' Exhibits A-1 to A-59, prepared by defendant, include this time and only this time before and after shifts. The judgment entered in this case includes only such time before and after shift as was credited to the plaintiffs by defendant corporation in preparing the aforesaid exhibits compensable according to practice at the plant and computed according to formula prescribed by defendant corporation.

Affiants further state that the aforesaid practice, custom and formula for computation followed by defendant in computing the plaintiffs' compensable time fully appears [fol. 1732] in the evidence already heard in this case, and particularly in the testimony of John L. Kelly, pay roll supervisor, and a witness for defendant.

Affiants further state that under the ruling of this Court all the plaintiffs are non-exempt employees and are entitled to be compensated for the time before and after shift credited to them by defendant in accordance with the policy of defendant, and the customs and practices that obtained at the plant.

2. Affiants further state that it is not true, as stated in the affidavit of said Harry P. Miller, that plaintiffs were on the premises before and after shift by their own choice and for their own convenience, and that they engaged in no activity during the period before and after shifts, but on the contrary these affiants depose and state that the duties performed by plaintiffs and required to be performed by them during said period were as follows:

Before Shift.

All Safety Inspectors were required to report one-half hour before shift and to punch the time clock 15 minutes before that time. Defendant corporation issued a directive to that effect which was introduced in evidence as Plaintiffs' Exhibit G, and read as follows:

"June 3, 1942.

All Safety Inspectors,  
Mr. S. L. Hertling.

Effective Friday, June 5, 1942, the working hours for Inspectors shall be as follows:

'A' Shift .....	7:30 to 4:00 P. M.
'B' Shift .....	3:30 — 12:00 P. M.
'C' Shift .....	11:30 — 8:00 A. M.

[fol. 1733] "The time clock shall be punched within fifteen minutes before the hour. In order that we may take advantage of the half hour lap-over in shift time, the following procedure for inspectors shall be used:

1. Punch Clock
2. Report to Chief Inspector's office
3. Check files
4. Obtain note book and necessary material
5. Report to unit and contact Inspector from preceding shift.

(Signed) S. L. HERTLING

(Typed) S. L. HERTLING."

SLH:mw

Affiants further state that as the above quoted directive sets out, these were "working hours" and they began one-half hour before shift, to-wit, 7:30 for the 8:00 o'clock shift, 3:30 for the 4:00 o'clock shift, and 11:30 for the 12:00 o'clock shift, and that the clock had to be punched 15 minutes beforehand, this 15 minutes being the tolerance period. Affiants state that the foregoing exhibit states the important duties that plaintiffs were required to perform and that said duties as actually performed and stated more in detail were as follows:

Punch the time clock, report to Chief Inspector's office, check files, obtain notebook and necessary material, report to unit and contact Inspector from preceding shift, and discuss with him any matters that had arisen in the preceding shift that required attention from the new shift.

#### After Shift.

Put away notebook and material, turn in reports and complete them if incomplete, change from working clothes, punch the clock.

In addition to the foregoing plaintiffs were often required to remain for instruction, and were required to stay before Sunday or any shut down period to check and see if the unit was cleaned up according to clean up procedures prescribed by Management. The following directive, dated September 24, 1942, makes it clear what was expected of the Safety Inspectors in this respect:

*"Date: September 24, 1942*

From: G. A. Gilbertson      Address: Administration Building

Messrs: E. J. Strong  
 H. S. L. Wheat  
 V. P. Birtley  
 J. M. Baker  
 E. H. Ebert  
 E. F. Flynn  
 J. K. McDermott

We have had instances in the past where on the last shift before the plant shut down proper cleaning in

the primer inserting and loading rooms was not done, leaving these buildings in a hazardous condition during the shut down.

We have found in the tracer charging buildings that if the people concerned are not allowed to leave these buildings until the Safety Inspector has approved their condition that we are able to eliminate dirty and hazardous conditions entirely. Therefore, please set it up in the areas under your control, so that the General Foremen, Foremen, etc., of the primer inserting and loading rooms are required to obtain an O. K. on the condition of these buildings from the Safety Inspector in your unit before they can consider the buildings clean. We are sure this will eliminate considerable anxiety as to the condition of these buildings during shut down periods.

GAG:ES

G. A. GILBERTSON

CC: Messrs: D. C. Storms  
B. E. Rogers  
M. O. Thompson  
C. E. Strickland

Safety Engineers will please be guided by Mr. Gilbertson's above instructions to his supervisory people. This places the responsibility for strict adherence to the clean-up procedure entirely with the Safety Engineer because he is not to approve the condition of a building until it meets requirements.

JACK SEWELL."

[fol. 1735] Affiants further state that Safety Engineers were also often required to stay after shift and take a position at an exit and count people leaving the plant, the purpose being to see what exits had the greatest use.

Lunch Period.

Affiants further state that during the lunch period Safety Engineers were expected to stay on the plant premises, and were always subject to call in case of acci-

dent or emergency, and that accidents requiring their attention during the lunch period did occur. They were also often required at such time to take a count of the number of people using the plant canteens and to perform other miscellaneous duties; and affiants further state that it was at all times the policy of the Company, as set out in its booklet (Plaintiffs' Exhibits C-1 to C-4), and was the custom and practice at the plant to compensate all except exempt employees for the lunch period. This policy was admitted by pay roll Supervisor Kelly in his testimony, and in accordance with that testimony affiants state it was the policy of the Company to allow a lunch period to all hourly workers and to all salaried workers working on shifts and not exempted. And affiants state that the statements of Harry P. Miller on information and belief in his affidavit to the effect that the lunch period was not compensable in respect to the class of employees to which plaintiffs belonged is incorrect and in conflict with the policy of the Company, as stated in its booklets, and the practice that prevailed at the plant and as followed by its pay roll Supervisor in making up pay rolls.

[fol. 1736] 4. That it is not true, as stated in said affidavit, of Harry P. Miller, that in classifying these plaintiffs, defendant corporation in good faith conformed to and relied upon administrative regulations, orders, rulings, approvals and interpretations of any agency of the United States, or that defendant in good faith conformed to and relied upon any administrative practice or enforcement policy of any agency of the United States with respect to the class of employers to which defendant belonged, but on the contrary, affiants state that defendant made, conformed to and relied upon its own classifications; that the facts are that no agency of the United States made any classifications of plaintiffs, and affiants are informed and believe that their classification was arrived at in the following manner: Harry P. Miller, Director of Personnel, and Clyde E. Strickland, Chief Safety Engineer, shortly after the start of operations made a tour of all units of the department. They spent about three hours making these rounds, checking the activities of the personnel and the department records; they then conferred with an analyst in the employ of

defendant corporation on a salary, and between them they decided to classify plaintiffs as being employed in an administrative capacity, and therefore exempt from the Fair Labor Standards Act of 1938. It was a policy formulated entirely by defendant corporation, based on its own investigations, and was not the policy of any agency of the United States.

Affiants are further informed and believe that the data referred to in the affidavit of Harry P. Miller as having [fol. 1737] been submitted to the Contracting Officer of the Ordnance Department was submitted to said Officer only that he might approve the labor costs for purposes of reimbursement, and was not submitted to him for purposes of classification, and any acquiescence or approval on his part was solely with reference to the reimbursability of the pay rolls submitted.

Affiants further state that during the entire periods of their employment at the plant they never saw or heard anything to indicate that any representative of the Contracting Officer, the Ordnance Department or the War Department took any part or had any voice in the matter of their classification, and affiants state on information and belief that neither said Contracting Officer or the Ordnance Department, or the War Department ever issued any regulation, order, rules, approval or interpretation with respect to their classification, and that neither said party nor said agencies ever promulgated any administrative practice or enforcement policy with respect to defendant or any class of employers in regard to classifications of Safety Inspectors or Engineers.

[Affiant] deny that the classification of plaintiffs, or any of them, was made to conform to any regulations or policies of the aforesaid parties or agencies, and deny that defendant relied on any such in making plaintiffs' classification, and aver the facts to be that the classification of these plaintiffs was a policy entirely initiated, established and conformed to by defendant corporation, and in doing so it relied entirely upon its own investigations and records.

[fol. 1738] Affiants further state that applications to increase wages or salaries referred to in the affidavit of said Harry P. Miller were customarily made, both as to exempt and non-exempt employees, and said application involved approval only of the amount of the raise and did not involve any question of classification.

5. Affiants further state that defendant's action in classifying plaintiffs as employed in an administrative capacity, and its action in exempting plaintiffs from the overtime provisions of the Fair Labor Standards Act of 1938 was not in good faith, and that the defendant did not have reasonable grounds to believe that in so classifying plaintiffs they were not violating the Fair Labor Standards Act.

Affiants further state the facts to be that shortly after defendant adopted its classification policy the plaintiffs objected thereto and made both individual and organized protest to the Management; that the objections and protest became so general in the Safety Department that Clyde E. Strickland, then Chief Safety Engineer, called a meeting of all three shifts for a discussion of the matter, and at said meeting plaintiff, F. N. Harris, made a talk, setting out the objections that the men had to their classification, stating the reasons for those objections, and pointed out why the plaintiffs were not included within the Administrator's Regulation defining administratives. Mr. Strickland made no attempt to answer the facts or the argument presented by Mr. Harris on behalf of the Safety Inspectors, [fol. 1739] and simply stated that it was Management's policy and nothing could be done about it; and the suggestion was then made on behalf of plaintiffs that a suit be brought to test the matter, but this suggestion received no cooperation either from Strickland or from the Management.

Most of the foregoing facts already appear in the record in this case. Further evidence would merely confirm what is already in the record, and what is here stated, and affiants state that the evidence already taken in this case covering all the circumstances involved in this classification show clearly that the action of defendant corporation

was wilful and without any extenuating circumstances, and does not warrant any reduction in the liquidated damages.

And further affiants saith not.

F. N. HARRIS,  
A. C. KEMP,  
W. F. O'MARA,  
ARTHUR C. KROPP,  
F. P. KNIGHT.

Subscribed and sworn to before me, a Notary Public within and for the City of St. Louis, State of Missouri, this the 11th day of June, 1947.

My commission expires April 23, 1949.

(Seal)

MAY C. MECKFESSEL,  
Notary Public.

[fol. 1740] I hereby certify that service of the foregoing affidavits was had upon defendant by mailing a copy thereof to Bryan, Cave, McPheeters and McRoberts, for the attention of Mr. R. H. McRoberts, its attorney of record, at their last known address, 1630 Boatmen's Bank Building, St. Louis 2, Missouri, and service was made and had upon L. Metcalfe Walling, amicus curiae, by mailing a copy thereof to his attorney of record, Mr. Reid Williams, Regional Attorney, Department of Labor, at his last known address, 3000 Fidelity Building, Kansas City 6, Missouri, both of said copies having been mailed on the 11th day of June, 1947.

THOMAS BOND,  
Attorney for Plaintiffs,  
408 Olive Street,  
St. Louis 2, Missouri,  
Chestnut 6824.

[fol. 1741] (Motion of Plaintiffs for Substitution of LaVerne J. Ludwig, Administratrix, etc., in the Place of B. J. Ludwig, Deceased, and Gladys Connell, Administratrix, etc., in the Place of E. Connell.)

(Filed August 4, 1947.)

Now come plaintiffs and also come LaVerne J. Ludwig, administratrix, and Gladys Connell, administratrix, by their attorney, and respectfully show to the Court that plaintiff, B. J. Ludwig, died a resident of the City of St. Louis, Missouri, June 27, 1946, and that LaVerne J. Ludwig, his widow, was duly appointed administratrix of his estate by the Probate Court of the City of St. Louis, Missouri, on the 21st day of May, 1947, and that she has duly qualified as such, and a certified copy of her letters of administration is herewith attached and made part hereof. Plaintiffs and movants further state that plaintiff, F. Connell, whose full name was Frank J. Connell, died a resident of Queens County, State of New York, on May 16, 1946, and that on the 26th day of May, 1947 movant, Gladys Connell, his widow, was duly appointed administratrix of his estate by the Surrogate Court of the County of Queens, State of New York, and that she has duly qualified as such, and a certified copy of her letters of administration is herewith attached and made a part hereof.

Plaintiffs and movants further state that the claims of the said deceased plaintiffs, B. J. Ludwig and E. Connell, as set out in the first amended complaint herein, are not extinguished by death, but survive to their respective personal representatives, and that this motion is made within [fol. 1742] two years after the death of said plaintiffs; that said LaVerne J. Ludwig, administratrix, and Gladys Connell, administratrix, are the representatives of said deceased plaintiffs, and that they and each of them desire and hereby request that they be substituted respectively as plaintiffs herein.

Wherefore, the premises considered, and pursuant to Rule 25 of the New Rules of Federal Practice, plaintiffs and movants pray that said LaVerne J. Ludwig, administratrix of the Estate of B. J. Ludwig, deceased, be substi-

tuted as a plaintiff herein for and instead of B. J. Ludwig, deceased, and that said Gladys Connell, administratrix of the Estate of F. Connell, be substituted as a party plaintiff herein for and instead of F. Connell, deceased. And plaintiffs and movants pray for such other and further orders in the premises as to the Court may seem reasonable and just.

THOMAS BOND,  
Attorney for Plaintiffs, and Attorney for  
LaVerne J. Ludwig, Administratrix,  
and Gladys Connell, Administra-  
trix, Movants.

I hereby certify that service of the foregoing Motion for Substitution of Parties and Notice of Hearing was had upon defendant by mailing a copy thereof to Bryan, Cave, McPheeters & McRoberts, for the attention of R. H. McRoberts, its attorneys of record, at their last known address, 1630 Boatmen's Bank Building, St. Louis 2, Missouri; and like service was made and had upon L. Metcalfe Walling, amicus curiae, by mailing copy thereof to his attorney of record, Mr. Reid Williams, Regional Attorney, Department of Labor, at his last known address, 3000 Fidelity Building, Kansas City 6, Missouri. All of same having been mailed on this 4th day of August, 1947.

THOMAS BOND;  
Attorney for Plaintiffs and Movants,  
408 Olive Street, St. Louis, Mo.,  
Chestnut 6824.

[fol. 1743] The State of Missouri.

To all Persons to whom these Presents shall Come—  
Greeting:

Know Ye, That whereas Ben Ludwig also known as Bennett J. Ludwig [also known as,] also known as B. J. Ludwig late of the City of St. Louis, died intestate as it is

said, having at the time of his death, property in this State, which may be lost, destroyed or diminished in value if speedy care be not taken of the same; to the end, therefore, that the said property may be collected, preserved and disposed of according to law, we do hereby appoint LaVerne J. Ludwig administratrix of all and singular the goods, and chattels, rights and credits which were of the said Ben Ludwig also known as Bennett J. Ludwig also known as B. J. Ludwig at the time of his death with full power and authority to secure and dispose of said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts and things which are or hereafter may be required of her by law.

In Testimony Whereof, I, F. Leland Carpenter, Clerk of the Probate Court, in and for the City of St. Louis, hereto sign my name and affix the seal of said Court, at office, this 21st day of May, A. D. 1947.

(Seal)

F. LELAND CARPENTER, Clerk.

State of Missouri, } ss.  
City of St. Louis.

I, F. Leland Carpenter, Clerk of the Probate Court of the City of St. Louis, do hereby certify that the above is a true copy of the original Letters of Administration in the matter of the estate of Ben Ludwig also known as Bennett J. Ludwig/also known as B. J. Ludwig deceased, as fully as the same appear of record in my office. I further certify said appointment remains in full force and effect on this date.

In Testimony Whereof; I hereto set my hand and affix the seal of said Court, at office, in City of St. Louis this, 27th day of May, 1947.

F. LELAND CARPENTER, Clerk,

(Seal)

By V. J. McCAFFERY, Deputy Clerk.

[fol. 1744] No. 42844.

These Letters so far as they affect a certain cause of action are subject to the limitations, restrictions and restraint specified in Section S. C. A. 122.

The People of the State of New York.

To All To Whom These Presents Shall Come or May Concern, Send Greeting:

Know Ye, That we, having inspected the records of our Surrogate's Court in and for the County of Queens, do find that on the 26th day of May in the year one thousand nine hundred forty-seven by said Court, Letters of Administration of the goods, chattels, and credits of

Frank J. Connell

late of the County of Queens, deceased, were granted and committed unto

Gladys Connell

and that it does not appear by said records that said letters have been revoked.

In Testimony Whereof, we have caused the seal of the Surrogate's Court of the County of Queens to be hereunto affixed.

Witness, Hon. Anthony P. Savarese, Surrogate of our said County of Queens, the 27th day of May, 1947.

F. C. HARRIS,

Clerk of the Surrogate's Court.

(Seal)

[fol. 1745] At a Surrogate's Court held in and for the County of Queen's, at Jamaica, in said County, on the 26th day of May one thousand nine hundred and forty-seven.

Present:

Hon. Anthony P. Savarese, Surrogate

In the Matter of the Application for  
Letters of Administration of the  
Goods, Chattels and Credits which  
were of

Frank J. Connell,  
Deceased

} File 2702-47  
Decree

On reading and filing the petition of Gladys Connell duly verified, the 21st day of May, 1947, praying for a decree awarding Letters of Administration of the goods, chattels and credits of the said deceased to, her or to such other person or persons, who have an equal or prior right thereto, and proving also to the Surrogate the existence of all jurisdictional facts.

And this Court being satisfied that said petitioner is entitled to such Letters of Administration, and is in all respects competent to act as such Administratrix, does hereby decree that Letters of Administration of the goods, chattels and credits of the said deceased be awarded to the said petitioner on her filing the oath of office and executing and filing a bond, as prescribed by statute, in the sum of Thirty-five hundred (\$3500.00) Dollars, and it is further

Ordered that said letters shall be limited as to a cause of action, to the prosecution thereof and said Administratrix is hereby restrained from compromising said action or enforcing any judgment recovered therein, until the further order of the Surrogate.

A. P. SAVARESE,  
Surrogate.

No. 22566

State of New York }  
County of Queens } ss.  
Surrogate's Court }

I, Frederick C. Harris, Clerk of the Surrogate's Court of the County of Queens, Do Certify, that I have compared the preceding with the original Order, In the Matter of the Application for Letters of Administration of the Goods, Chattels and Credits which were of Frank J. Connell, deceased, as the same is filed in my office under date of May 26, 1947 and that the same is a true and correct copy thereof and of the whole of such original.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the Surrogate's Court of the said County of Queens, at Jamaica, in said County, this 27th day of May, 1947.

F. C. HARRIS,  
(Seal) Clerk of the Surrogate's Court.

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[fol. 1746] (Order of District Court Overruling Motion of Defendant for New Trial.)

(Filed September 2, 1947.)

The motion of the defendant for a new trial in the above entitled cause having been filed, the Court having considered said motion, arguments of counsel, and briefs of the parties submitted in connection therewith, and being fully advised in the premises, doth Order that said motion be, and is hereby denied.

GEO. H. MOORE,  
Judge.

Filed: September 2, 1947.

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[fol. 1747] (Order of District Court Substituting LaVerne J. Ludwig, Administratrix, as Plaintiff in the place of B. J. Ludwig, Deceased, and Gladys Connell, Administratrix, as Plaintiff in the Place of F. Connell, Deceased.)

(Filed September 22, 1947.)

Now again come the parties in the above entitled cause by their respective attorneys, and it appearing to the Court that the death of plaintiff B. J. Ludwig on June 27, 1946, and the death of plaintiff F. Connell on May 16, 1946, have been duly suggested, and that their respective representatives and the plaintiffs have duly filed their motion praying that LaVerne J. Ludwig, Administratrix of the Estate of B. J. Ludwig, deceased, be substituted as a plaintiff herein for and instead of B. J. Ludwig, deceased, and that Gladys Connell, Administratrix of the Estate of F. Connell, deceased, be substituted as a plaintiff herein for and instead of F. Connell, deceased, and it further appearing that said motion, together with due notice of the hearing thereof, has been duly served on the parties hereto, and said motion now coming on to be heard, on the motion and the evidence attached thereto, same was argued and submitted to the Court and having been duly considered was by the Court sustained.

It is therefore ordered and adjudged that movant LaVerne J. Ludwig, Administratrix of the Estate of B. J. Ludwig, deceased, be substituted as a plaintiff herein for and instead of B. J. Ludwig, deceased, and it is further ordered and adjudged that movant Gladys Connell, Administratrix of the Estate of F. Connell, deceased, be substituted as a plaintiff herein for and instead of F. Connell, deceased.

Dated at St. Louis, Missouri, this 22nd day of Sept. 1947.

GEO. H. MOORE,  
United States District Judge.

[fol. 1748] (Order of District Court Extending Time to File Record on Appeal.)

(Filed October 16, 1947.)

On motion of the defendant, by its attorneys, and for cause shown, the time of the defendant as appellant for filing and docketing its record on its appeal to the United States Circuit Court of Appeals is hereby ordered extended to and including November 20, 1947.

Dated October 16, 1947..

GEORGE H. MOORE,  
Judge.

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[fol. 1749] (Order of District Court that Defendant may Deposit Cash Money into Registry of Court in Lieu of Supersedeas Bond on Appeal.)

(Filed October 22, 1947.)

Now again come the parties in the above entitled cause, by their respective attorneys, and it appearing to the Court that defendant has heretofore filed notice of appeal from the final judgment heretofore entered herein to the United States Circuit Court of Appeals for the Eighth Circuit, and that defendant desires to deposit into the registry of this Court the sum of \$300,000 in cash in order to stay proceedings to enforce said judgment pending said appeal, said deposit to be in lieu of the usual supersedeas bond; and desires to release and set aside the execution, attachment and garnishment heretofore issued to enforce said judgment.

Now, therefore, on application of defendant and by consent of the plaintiffs, it is ordered and adjudged that defendant deposit forthwith with the Clerk of this Court the sum of \$300,000 in cash and that when so deposited, same is to be in lieu of a supersedeas bond and is to be condi-

tioned for the satisfaction of the judgment, interest, damages and costs in all respects and to the same extent as the usual supersedeas bond, and same shall thereupon stay execution upon said judgment pending said appeal, and it is further ordered and adjudged that the execution issued herein on October 1, 1947, and any attachment, garnishment or other proceeding in aid thereof, be [fol. 1750] quashed, released and for naught held at the cost of appellant.

It is further ordered and adjudged that if, for any reason, said appeal is dismissed or if said judgment be affirmed, or if said judgment be in any respect modified, or judgment in any amount be directed in favor of all or any of the plaintiffs, and defendant shall fail to pay and satisfy same in full with interest, damages and costs, then and in either of said events the Clerk of this Court is hereby ordered and directed upon receipt of final mandate of the appellate courts to forthwith and without any further order to apply and pay out said moneys in satisfaction thereof.

It is further ordered and adjudged that if, after full payment and satisfaction of said judgment or judgments, interest, damages and costs, either by defendant or by the Clerk of this Court, as directed herein, any of the aforesaid deposit remains, said remainder shall be returned and paid over to the defendant, and if said judgment be finally reversed outright by any appellate court, and no recovery allowed to any plaintiff, then said deposit shall be returned and paid over to the defendant.

Dated at St. Louis, Missouri, this 22nd day of October, 1947.

GEO. H. MOORE,  
United States District Judge.

[fol. 1751] Docket entry showing the deposit of \$300,000.00 in cash in the registry of the Court in lieu of supersedeas bond.

(October 22, 1947.)

On oral application of defendant and by consent of plaintiffs, order filed and entered directing defendant to forthwith deposit with the Clerk of the Court the sum of \$300,000.00 in cash to act as a supersedeas bond in accordance with the terms of said order pending determination of defendant's appeal from judgment heretofore entered herein, and quashing and releasing execution issued herein October 1, 1947 upon said judgment, as well as all attachments, garnishments, or other proceeding in aid of said execution, and providing for disposition of aforesaid fund upon receipt of trial Court of mandate of Appellate Court on final determination of aforesaid appeal. Whereupon defendant deposits in the registry the aforesaid sum of \$300,000.00 pursuant to said order.

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[fol. 1752] Statement of Points Upon Which Appellant Intends to Rely Upon Its Appeal.

(Filed October 29, 1947.)

Defendant hereby makes the following statement of the points upon which it intends to rely upon its appeal from the judgment rendered against it by the District Court:

1. On Wednesday, May 14, 1947, the Portal-to-Portal Act of 1947, having been theretofore duly enacted by the Congress of the United States, was approved and signed by the President of the United States, and upon said day became a law of the United States, only five days prior to the signing and entry herein, on May 19, 1947, of the Findings of Fact and Conclusions of Law and Judgment. The said Portal-to-Portal Act of 1947, by its terms and provisions, expressly modified and amended the Fair Labor Standards Act of 1938, as amended, upon which the

alleged causes of action described in plaintiffs' First Amended Complaint are based, limiting, modifying and restricting certain of the rights granted to plaintiffs by said Fair Labor Standards Act of 1938, as amended, authorizing the defendant to plead and prove as a defense and bar to the alleged causes of action described in the said First Amended Complaint certain facts which did not constitute a defense or bar thereto prior to the said Portal-to-Portal Act of 1947, defining and limiting the jurisdiction [fol. 1753] of the Courts with respect to the alleged causes of action described in said First Amended Complaint, and granting to the Courts certain discretion with respect to the awarding of liquidated damages which the Courts did not possess prior thereto. Although the defendant did not have time nor opportunity between May 14, 1947, when said Portal-to-Portal Act of 1947 became a law, and May 19, 1947, the date of the entry of the Findings of Fact and Conclusions of Law and Judgment herein, to call said Act and its effect upon the present proceedings to the attention of the District Court, and to plead and to prove certain facts which in and by said Act are made a complete defense, and bar to this proceeding, nevertheless said Act became and was binding upon the Court, and all of the parties to this proceeding, and the Findings of Fact and Conclusions of Law and the Judgment made and entered herein violate and are contrary to the provisions of said Act.

2. Plaintiffs failed to plead and to prove that (a) during the one-half hour lunch periods and (b) during the time prior to the beginning of and following the ending of plaintiffs' regular working shifts, plaintiffs, or any of them, engaged in any activity which was compensable by either:

- (1) an express provision of a written or non-written contract in effect, at the time of such activity, between plaintiffs, or any of them, their or his agent, or collective bargaining representative and the defendant; or
- (2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such plaintiffs were employed, covering such

activity, not inconsistent with a written or non-written contract, in effect at the time of such activity, between such plaintiffs, or any of them, their or his agent, or collective bargaining representative and the defendant, [fol. 1754] and that such activity was engaged in during the portion of the day with respect to which it was so made compensable; all as provided in said Portal-to-Portal Act of 1947, and hence the District Court erred in making and entering its Findings of Fact Nos. 8, 9 and 10, which are erroneous and contrary to the evidence, the weight of the evidence, and the law, and the said Judgment, which is, pro tanto, excessive, with respect to each of the plaintiffs, and contrary to law.

3. The Court erred in including in its judgment, with respect to each of the plaintiffs, an allowance of overtime compensation, plus liquidated damages for (a) the one-half hour lunch periods and (b) the time prior to the beginning of and following the ending of plaintiffs' regular working shifts, contrary to the provisions of the Portal-to-Portal Act of 1947.

4. The Court erred in making and entering its Findings of Fact and Conclusions of Law and Judgment, in the application of the overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended, and in determining the time for which the defendant employed the plaintiffs, and each of them, by counting more time than that during which the plaintiffs engaged in activities which were compensable within the meaning of the Portal-to-Portal Act of 1947.

5. The Court erred in making and entering its Judgment, in that under the provisions of the Portal-to-Portal Act of 1947 the Court had no jurisdiction to allow overtime compensation, plus liquidated damages, for (a) the one-half hour lunch periods or (b) the time prior to the beginning and following the ending of plaintiffs' regular working shifts.

6. The Court erred in making and entering said Findings of Fact and Conclusions of Law and Judgment, in

that each and every act or omission complained of in the First Amended Complaint was done or omitted to be done [fol. 1755] in good faith, in conformity with, and in reliance upon administrative regulations, orders, rulings, approvals or interpretations, of one or more agencies of the United States, and, under the provisions of Section 9 of the Portal-to-Portal Act of 1947, such facts, if established, constitute a bar to this action or proceeding, and defendant has offered and requested leave of Court to plead and prove the said facts.

7. The Court erred in making and entering its Findings of Fact and Conclusions of Law and Judgment in that each and every act or omission complained of in the First Amended Complaint was done or omitted to be done in good faith, in conformity with and in reliance upon administrative practices or enforcement policies of one or more agencies of the United States, with respect to the class of employers to which defendant belongs, and, under the provisions of the Portal-to-Portal Act of 1947, such facts, if established, constitute a bar to this action or proceeding, and defendant has offered and requested leave of Court to plead and prove the said facts.

8. The Court erred in making and entering its Findings of Fact and Conclusions of Law and Judgment in that each and every act or omission which gave rise to the present action was done or omitted to be done in good faith, and defendant had reasonable grounds for believing that such acts or omissions were not a violation of the Fair Labor Standards Act of 1938, as amended, and, under the provisions of the Portal-to-Portal Act of 1947, if the defendant shows such facts to the satisfaction of the Court, the Court may in its sound discretion award no liquidated damages, or award any amount thereof not to exceed the amount specified in Section 16 (b) of such Fair Labor Standards Act of 1938, as amended, and defendant has offered and requested leave of Court to show such facts to the satisfaction of the Court.

[fol. 1756] 9. The Court erred in finding (Finding of Fact No. 2) that the ammunition manufactured at the St. Louis

Ordnance Plant was intended for transportation in interstate commerce to points outside of the State of Missouri, and that said ammunition and by-products thereof were transported in interstate commerce and that said defendant was engaged in commerce and in the production of goods for commerce within the meaning of the Fair Labor Standards Act of 1938, and that defendant was subject to the provisions of such Act.

10. The Court erred in finding (Finding of Fact No. 3) that the plaintiffs, and each of them, were engaged in the production of goods for interstate commerce within the meaning of the Fair Labor Standards Act of 1938.

11. The Court erred in finding (Finding of Fact No. 4) that the plaintiffs, and each of them, were employed by defendant at the base rates of pay alleged in Paragraphs Numbered 1 to 59, inclusive, of the First Amended Complaint herein.

12. The Court erred in finding (Finding of Fact No. 4) that plaintiffs, and each of them, all performed similar duties and were similarly situated within the meaning of Section 16 (b) of the Fair Labor Standards Act of 1938.

13. The Court erred in finding (Finding of Fact No. 5) that the services and duties performed by the plaintiffs, and each of them, were necessary to and interwoven with the interstate commerce business of the defendants, and were necessary to and contributed to and were interwoven with the production of goods for interstate commerce by the defendant.

14. The Court erred in finding (Finding of Fact No. 6) that defendant failed to prove as to any of the plaintiffs [fol. 1757] that any substantial exercise of discretion and independent judgment was required by them in the performance of their duties, and failed to prove that any of the plaintiffs were employed in an administrative capacity, as that term is defined and delimited by the Regulations of the Administrator, and that none of the plaintiffs were exempted as administrative employees.

15. The Court erred in finding (Finding of Fact No. 7) that those plaintiffs who were employed as Assistant

Chief Safety Engineers and Assistant Staff Supervisors were not exempted as executive employees because no such exemption was pleaded as to them in the defendant's answer, and also because defendant failed to prove that they, or any of them, customarily and regularly exercised discretionary powers in the performance of their duties, or that they had authority to hire or fire other employees, or that their suggestions and recommendations as to the hiring or firing, and as to the advancement or promotion or other change of status of other employees were given particular weight, as specified in the Administrator's Regulations, and that defendant failed to prove that these plaintiffs, or any of them, were employed in a bona fide executive capacity, as defined and delimited in the Administrator's Regulations, and that none of the plaintiffs were exempted as executive employees.

16. The Court erred in finding (Finding of Fact No. 8) that plaintiffs, and each of them, worked total actual hours, as shown on summaries prepared and furnished by defendant and received in evidence as Plaintiffs' Exhibits A-1 to A-59, respectively, in each pay period there shown, and to the extent said hours exceeded forty hours in each week or any week same were in excess of the applicable maximum prescribed by Section 7 of the Act, and that plaintiffs, and each of them, are entitled to [fol. 1758] be compensated therefor at the rate of one and one-half times the regular rate at which they were, respectively, employed, and that said Exhibits constitute a sufficient basis for the computation of overtime pay due to each of the plaintiffs.

17. The Court erred in finding (Finding of Fact No. 9) that the lunch period of one-half hour each day was compensable time, and that defendant improperly and unlawfully deducted this one-half hour on the summaries prepared by it, as aforesaid, and received in evidence as Plaintiffs' Exhibits A-1 to A-59, commencing with the first pay period and including the pay period ending October 10, 1943, and that Plaintiffs' Exhibits B-1 to B-59, wherein this one-half hour is added to the actual hours reported in defendant's summaries, correctly reflect the actual hours worked by plaintiffs, and each of them, and correctly compute the claim of each plaintiff.

18. The Court erred in finding (Finding of Fact No. 10) that the salaries paid to plaintiffs were base pay for a forty hour week, and that plaintiffs are entitled to be compensated for all hours worked in excess thereof at one and one-half times the regular hourly rate, and that the proper method of computing the regular hourly rate is to divide the weekly wage by 40, and the proper method of computing the overtime is to multiply the hours worked in each pay period in excess of forty by one and one-half times the regular hourly rate computed as above stated, and that the computations made in Plaintiffs' Exhibits B-1 to B-59, received in evidence, are correctly computed, and that the sum of columns 6 and 7 of said exhibits correctly state the total overtime compensation lawfully due to each plaintiff.

[fol. 1759] 19. The Court erred in concluding (Conclusions of Law No. 1) that at all times referred to in the evidence herein defendant was engaged in commerce and in the production of goods for commerce, and was an employer within the meaning of the Fair Labor Standards Act of 1938.

20. The Court erred in concluding (Conclusions of Law No. 2) that during their respective periods of employment plaintiffs and each of them were engaged in the production of goods for commerce within the meaning of said Act.

21. The Court erred in concluding (Conclusions of Law No. 3) that none of the plaintiffs are exempted from the benefits of the Act under any provisions of the Act or under any Regulations of the Administrator, either on the ground that they were employed in an administrative capacity or on the ground that they were employed in an executive capacity, or for any other reason.

22. The Court erred in concluding (Conclusions of Law No. 4) that the salaries received by plaintiffs were payment for a forty hour week, and all hours worked in excess thereof are compensable overtime to be computed by the following method, to-wit: multiply the monthly pay by twelve and divide the result by fifty-two, thus obtaining the weekly wage; divide this weekly wage by forty, thus obtaining the regular hourly rate; multiply the hours

worked in excess of forty by one and one-half times this regular hourly rate and the result is the overtime compensation due; add to this result an equal amount as liquidated damages and the result is the total amount which each plaintiff is entitled to recover.

23. The Court erred in concluding (Conclusions of Law No. 5) that the provision of the Fair Labor Standards Act for the payment of liquidated damages and attorney's fee [fol. 1760] is compensatory in character and not penal, and that in the absence of holdings to the contrary by the Missouri courts, the Five Year Statute of Limitations of the State of Missouri applies to the causes of action at bar, and that the cause of action of none of the plaintiffs is barred by any Statute of Limitations.

24. The Court erred in concluding (Conclusions of Law No. 6) that there shall also be assessed against defendant an attorney's fee in the sum of Twenty Four Thousand Six Hundred Twenty-Five Dollars (\$24,625.00) to be paid by defendant to Thomas Bond, plaintiffs' attorney of record.

25. The Court erred in ordering, adjudging and decreeing that judgment be entered herein in favor of each plaintiff and against defendant, instead of in favor of the defendant and against each plaintiff.

26. The Court erred in ordering, adjudging and decreeing that judgment be entered herein in favor of each plaintiff and against defendant in the respective amounts set forth for each plaintiff under the caption "Unpaid Overtime Compensation", and in ordering, adjudging and decreeing that to each such amount an equal amount be added as liquidated damages, as set forth opposite the name of each plaintiff under the caption "Liquidated Damages", and in ordering, adjudging and decreeing that judgment be entered herein in favor of each plaintiff and against defendant in the respective amounts set forth opposite the name of each plaintiff under the caption "Total Judgment", and in ordering, adjudging and decreeing that in addition to the above amounts plaintiffs have judgment against defendant for their attorney's fee in the sum of Twenty Four Thousand Six Hundred Twenty-five Dollars [fol. 1761] (\$24,625.00), and that said sum be paid by de-

defendant to Thomas Bond, plaintiffs' attorney of record, and that plaintiffs recover their costs.

27. The Court erred in the trial of said cause in admitting and receiving in evidence, over the objection of defendant, incompetent, irrelevant and immaterial evidence offered by the plaintiffs.

28. The Court erred in the trial of said cause in failing and refusing to admit and receive in evidence competent, relevant and material evidence offered by defendant.

29. The said judgment is contrary to law, the evidence and the weight of the evidence.

30. The said judgment is for the wrong party, being in favor of the plaintiffs and against the defendant, when it should have been in favor of the defendant and against the plaintiffs.

31. The Court erred in overruling defendant's Motion for a New Trial herein.

32. The Court erred in refusing to reopen the hearing of said cause and in refusing to retry any portion thereof.

33. The Court erred by refusing to permit defendant to plead and prove its defenses under the provisions of the Portal-to-Portal Act of 1947.

RHODES E. CAVE,  
R. H. McROBERTS,  
MARION S. FRANCIS,  
1630 Boatmen's Bank Building,  
St. Louis 2, Missouri,  
Attorneys for Defendant, The United  
States Cartridge Company.

BRYAN, CAVE, MCPHEETERS  
& McROBERTS,  
1630 Boatmen's Bank Bldg.,  
St. Louis 2, Missouri,  
Of Counsel.

[fol. 1762] Service of the above Statement of Points Upon Which Appellant Intends to Rely Upon Its Appeal acknowledged this 29th day of October, 1947.

THOMAS BOND,  
Attorney for Plaintiffs.

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I hereby certify that service of the foregoing Statement of Points Upon Which Appellant Intends to Rely Upon Its Appeal was made upon L. Metcalfe Walling, Amicus Curiae, by mailing a copy thereof to his attorney, Reid Williams, Regional Attorney, Department of Labor, at his last known address, 3000 Fidelity Building, Kansas City 6, Missouri, on the 29 day of October, 1947.

MARION S. FRANCIS,  
Attorney for Defendant The United States Cartridge Company.

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[fol. 1763] (Designation of Defendant of Contents of Record on Appeal.)

(Filed October 29, 1947.)

To the Clerk of the United States District Court  
for the Eastern District of Missouri:

The Clerk will please prepare, certify and transmit to the United States Circuit Court of Appeals for the Eighth Circuit a Transcript of the Record and include in such transcript only the matters designated as follows:

1. Plaintiffs' First Amended Complaint (including caption and signatures), filed April 5, 1946.
2. Defendant's Answer to First Amended Complaint (excluding caption and signatures), filed April 18, 1946.
3. Plaintiffs' Amended and Additional Interrogatories (excluding captions and signatures), filed March 26, 1946.
4. Defendant's Answers to Amended and Additional Interrogatories Propounded by Plaintiffs (excluding caption and signatures), filed April 20, 1946.

5. Plaintiffs' Request for Admissions under Rule 36, (excluding caption and signatures) filed April 24, 1946.
6. Defendant's Reply to Request for Admissions (excluding caption and signatures), filed May 6, 1946.
7. Order entry of May 15, 1946, granting leave to defendant to file amended answer to interrogatory No. 22.  
[fol. 1764]
8. Defendant's Amended Answer to Interrogatory No. 22 (excluding caption and signatures), filed May 15, 1946.
9. Full and complete transcript of all evidence and proceedings upon trial, including all exhibits.
10. Findings of Fact and Conclusions of Law (excluding caption, but including signatures and date of entry), made and filed by the Court on May 19, 1947.
11. The final Judgment and the order of entry thereof (excluding caption, but including the signature and order of entry thereof) filed and entered on May 19, 1947.
12. Defendant's Motion for a New Trial, together with the affidavit thereto attached (excluding captions and signatures), filed May 29, 1947.
13. Affidavits of F. M. Harris and others in opposition to Motion for New Trial (excluding captions and signatures), filed June 11, 1947.
14. Order of the Court denying and overruling defendant's Motion for a New Trial (excluding caption, but including signature) filed and entered September 2, 1947.
15. Defendant's Notice of Appeal (excluding caption and signatures) filed on September 17, 1947, together with Clerk's certificates as to service of Notice of Appeal.
16. Order dated October 16, 1947, extending time within which defendant may file and docket record on appeal.
17. Order for Security on appeal in lieu of Supersedeas Bond filed October 22, 1947.
18. Record entry of October 22, 1947 setting forth receipt of security deposit by Clerk.

19. Plaintiffs' Motion for Substitution of Parties Plaintiff, filed Aug. 4, 1947.

20. Order of Substitution of Parties Plaintiff entered Sept. 22, 1947.

21. This designation of the record and certificate of service thereof.

[fol. 1765] 22. Statement of Points Upon Which Defendant Intends to Rely Upon Its Appeal, and certificate of service thereof.

RHODES E. CAVE,  
R. H. McROBERTS,  
MARION S. FRANCIS,  
1630 Boatmen's Bank Building,  
St. Louis 2, Missouri,  
Attorneys for Defendant, The United  
States Cartridge Company.

BRYAN, CAVE, MCPHEETERS & McROBERTS,  
1630 Boatmen's Bank Building,  
St. Louis 2, Missouri,  
Of Counsel.

Service of the above Designation of Contents of the Record on Appeal acknowledged this 29th day of October, 1947.

THOMAS BOND,  
Attorney for Plaintiffs.

I hereby certify that service of the foregoing Designation of Contents of the Record on Appeal was made upon L. Metcalf Walling, Amicus Curiae, by mailing a copy thereof to his attorney, Reid Williams, Regional Attorney, Department of Labor, at his last known address, 3000 Fidelity Building, Kansas City 6, Missouri, on the 29th day of October, 1947.

MARION S. FRANCIS,  
Attorney for Defendant The United  
States Cartridge Company.

[fol. 1766] (Designation of Plaintiffs of Additional Matter to be Contained in Record on Appeal.)

(Filed November 3, 1947.)

To the Clerk of the United States District Court for the Eastern District of Missouri:

In addition to the matter heretofore designated by defendant, appellant, the Clerk will please include in the record on appeal the following matter, to-wit:

Docket entry of commencement of action by the filing of the complaint and the issuance of summons, excluding caption, filed and issued May 4, 1945.

This additional designation with certificate of service thereon.

THOMAS BOND,  
Attorney for Plaintiffs, Appellees,  
408 Olive Street,  
St. Louis, Mo. } Chestnut, 6824.

I hereby certify that service of the above and foregoing designation of additional matter to be contained in the record on appeal was made upon defendant, The United States Cartridge Company, by mailing a copy thereof to its attorneys, Messrs. Bryan, Cave, McPheeers & McRoberts, for the attention of Mr. R. H. McRoberts, at their last known address, 1630 Boatmen's Bank Bldg., St. Louis, Missouri, on the 3rd day of November, 1947.

THOMAS BOND,  
Attorney for Plaintiffs, Appellees.

[fol. 1767] (Clerk's Certificate to Transcript.)

United States of America,  
Eastern Division,  
Eastern District of Missouri. } ss.

I, James J. O'Connor, Clerk of the United States District Court within and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the attached and foregoing is a full, true and complete transcript (except in so far as the same is restricted by the designations of the respective parties in interest, of the matters to be incorporated herein as the record on appeal of defendant) of the record and proceedings in cause No. 3597 of this Court, entitled R. M. Powell, et al. vs. The United States Cartridge Company, a corporation, wherein The United States Cartridge Company, a corporation, has appealed to the United States Circuit Court of Appeals, 8th Circuit, from the final judgment and decree, entered on May 19, 1947 as well as from the order entered September 2, 1947, overruling defendant's motion for a new trial, as fully as the same remains on file and of record in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court in my office in the City of St. Louis, Missouri, in said Division of said District this 19th day of November, in the year of our Lord, Nineteen Hundred and Forty-seven.

(Seal)

JAMES J. O'CONNOR,  
Clerk, U.S. District Court.

By JOHN J. JARVIS,  
Deputy Clerk.

Filed Nov. 19 1947 E. E. Koch Clerk.

[fol. 1768] (Stipulation as to printing record.)

In the United States Circuit Court of Appeals  
for the Eighth Circuit

R. M. Powell, et al.,

Plaintiffs (Appellees),

vs.

The United States Cartridge Company,  
a corporation,

Defendant (Appellant).

No. 13,663

~~It is hereby stipulated and agreed that the following portions of the record on appeal need not be included in the printed record, to-wit:~~

Plaintiffs' Exhibits A-4 to A-28, A-30 to A-46, and A-48 to A-50, inclusive. (Print A-1, A-2, A-3, A-29, and A-47).

Plaintiffs' Exhibits B-4 to B-28, B-30 to B-46, and B-48 to B-59, inclusive. (Print B-1, B-2, B-3, B-29 and B-47).

Plaintiffs' Exhibit C-1, C-2 and C-4.

Plaintiffs' Exhibit D.

Plaintiffs' Exhibits E-1 to E-7, both inclusive, appearing on pages 935 to 991, both inclusive.

Those portions of Defendant's Exhibit 9 consisting of the time cards of Arthur C. Kropp to Arthur C. Kropp, both inclusive, appearing on pages 1089 to 1139, both inclusive.

Those portions of Defendant's Exhibit 13 appearing on pages 1244 to 1249, both inclusive.

Those portions of Defendant's Exhibit 22 appearing on pages 1450 to 1464, both inclusive.

Those portions of Defendant's Exhibit 23 appearing on pages 1526 to 1536, both inclusive, and 1542 to 1545, both inclusive (the portion of said Exhibit to be

printed consisting of that portion beginning with the words "Article III-B" on page 1536, down to the end of Paragraph T on page 1542).

All of Defendant's Exhibit 25 appearing on pages 1551 to 1573 except Article III-V appearing on pages 1566 and 1569.

[fol. 1769] Provided, however, that it is expressly understood and agreed that either of the parties hereto, in their printed briefs and oral arguments, may refer to and quote from any part or portions of the said record on appeal so omitted from the printed record, and that the Court may consult and refer to any portions of the said record so omitted.

It is further stipulated that the figures shown in the Judgment of the District Court under the caption "Unpaid Over-time Compensation" opposite the names of each of the plaintiffs are the same as the final figures in each of the corresponding Exhibits B-1 to B-59, respectively, said final figures being sometimes designated in said Exhibits as "Total Amount Claimed", "Total Claim", "Claim" or "Total".

RHODES E. CAVE,  
R. H. McROBERTS,  
MARION S. FRANCIS,

1630 Boatmen's Bank Building,  
St. Louis 2, Missouri,  
Attorneys for Defendant Appellant  
The United States Cartridge Company.

THOMAS BOND,  
408 Olive Street,  
St. Louis 2, Missouri,  
Attorney for Plaintiffs Appellees.

(Endorsed): No. 13,663. Filed in U. S. Circuit Court of Appeals on December 11, 1947.

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[fol. 979] And thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Eighth Circuit, viz:

(Appearance of Counsel for Appellant.)

The United States Cartridge Company, a corporation,  
Appellant,  
No. 13,663. vs.  
R. M. Powell, et al.

The Clerk will enter my appearance as Counsel for the defendant-appellant.

RHODES E. CAVE,  
R. H. McROBERTS,  
MARION S. FRANCIS.

(Endorsed): Filed in U. S. Circuit Court of Appeals,  
Nov. 19, 1947.

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(Appearance of Counsel for Appellees.)

The Clerk will enter my appearance as Counsel for the Appellees.

THOMAS BOND,  
408 Olive St.,  
St. Louis, Mo.

(Endorsed): Filed in U. S. Circuit Court of Appeals,  
Nov. 24, 1947.

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[fol. 980] (Order Denying Motion for Substitution of Parties Appellee.)

January Term, 1948.

Tuesday, January 20, 1948.

Motion of appellees and LaVerne J. Ludwig, Administratrix of the Estate of B. J. Ludwig, Deceased, that she be substituted as party appellee herein for and instead of B. J. Ludwig, deceased, and of Gladys Connell, Administratrix of the Estate of F. Connell, deceased, that she be substituted as a party appellee herein for and instead of F. Connell, deceased, was heretofore submitted to the Court, and

after consideration thereof and of the objections of appellant and the brief in support of the objections and in support of the motion, It is now here Ordered by the Court that said motion for substitution be, and the same is hereby, denied without passing upon the question of the validity of the judgments appealed from as entered or the validity of the orders of the Trial Court granting substitution.

January 20, 1948.

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[fol. 981] (Order granting William R. McComb, Administrator of the Wage and Hour Division, U. S. Department of Labor, leave to file brief amicus curiae.)

January Term, 1948.

Wednesday, February 11, 1948.

The appellant and the appellees having consented thereto in writing, It is hereby ordered that William R. McComb, Administrator of the Wage and Hour Division, United States Department of Labor, has leave to file a brief amicus curiae to be served on the other parties herein on or before April 10, 1948.

February 11, 1948

Approved as to form:

Attorneys for Appellant:

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[fol. 982] (Order vacating Submission, Setting Cause for Reargument and as to filing further briefs.)

September Term, 1948.

Tuesday, September 21, 1948.

This cause was argued and submitted to this Court at the May, 1948 Term. Since that time the Supreme Court has

handed down a decision in Kennedy et al. vs. Silas Mason Company, 334 U. S. 249, in which it is pointed out that in considering the merits of the controversy there involved, which is very similar to that here presented, three Acts of Congress require consideration: (1) The Fair Labor Standards Act; (2) The act of July 2, 1940 (54 Stat. 712); (3) The Walsh-Healy Public Contracts Act of June 30, 1936 (49 Stat. 2036). The Supreme Court was of the view that the record was not sufficiently complete in that case "for deciding issues of far flung import," the judgment having been entered in a summary proceeding.

In the present case the record, except on the issues sought to be raised under the Portal-to-Portal Act, would seem to be sufficient to warrant the consideration of the question as to the applicability, if any, of the above enumerated Acts of Congress. In the briefs and in the oral arguments it was assumed that under the issues only the Fair Labor Standards Act and the Portal-to-Portal Act were involved.

In view of the importance of the questions involved as they are pointed out by the Supreme Court in Kennedy [fol. 983] et al. vs. Silas Mason Company, supra, and the limited scope of the briefs and arguments heretofore presented in this cause, It Is Now Here Ordered by the Court on its own motion, that the submission of this cause be and the same hereby is set aside and vacated, and said cause is set down for re-argument before this Court in banc on the 8th day of November, A. D. 1948, at ten o'clock a. m. at St. Louis, Missouri, that being the first day of the November, 1948, Term of this Court.

It Is Further Ordered that the parties hereto may, if so advised, file supplemental briefs, particularly directed to the applicability, if any, of either or any of the above enumerated Act of Congress to the issues in this cause. The appellant may serve and file brief on or before October 15, 1948; the appellees may serve and file brief on or before October 30, 1948; and reply brief for appellant, if any, may be served and filed on or before November 6, 1948.

[fol. 984]

## (Order of Submission.)

November Term, 1948.

Monday, November 8, 1948.

Before Judges Gardner, Sanborn, Woodrough, Thomas, Johnsen, Riddick and Collet.

This cause having been called for hearing in its regular order, argument was commenced by Mr. R. H. McRoberts for appellant, continued by Mr. Thomas Bond for appellees, and concluded by Mr. R. H. McRoberts for appellant;

Thereupon, this cause was submitted to the Court in banc on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 985]

## Opinion.

United States Court of Appeals

For The Eighth Circuit.

No. 13,663.

The United States Cartridge  
Company, a corporation,

Appellant,

vs.

R. M. Powell, et al.,

Appellees.

Appeal from the  
United States Dis-  
trict Court for the  
Eastern District of  
Missouri.

[April 12, 1949.]

Mr. R. H. McRoberts (Mr. Rhodes E. Cave, Mr. Marion S. Francis, and Messrs. Bryan, Cave, McPheeters & McRoberts were with him on the brief) for Appellant.

Mr. Thomas Bond for Appellees.

Mr. William S. Tyson, Solicitor, Miss Bessie Margolin, Assistant Solicitor, Mr. William A. Lowe and Mr. E. Gerald Lamboley, Attorneys, and Mr. Reid Williams, Regional Attorney, United States Department of Labor, filed brief as Amicus Curiae.

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Before GARDNER, Chief Judge, and SANBORN, WOODROUGH, THOMAS, JOHNSEN, RIDDIOK, and COLLET, Circuit Judges.

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COLLET, Circuit Judge, delivered the opinion of the Court.

This is an action brought by a group of fifty-nine plaintiffs who were employed during World War II at the St. Louis Ordnance Plant to recover overtime compensation, liquidated damages, attorney fees, and costs, under the Fair Labor Standards Act of 1938. On trial the court found all the issues in favor of plaintiffs and entered judgment aggregating \$246,251.44 (twice the amount of overtime claimed), plus \$24,625.00 as attorney fees and costs. The parties will be referred to as they were designated in the District Court.

Defendant was engaged in the operation of a large munitions plant near St. Louis, Missouri, manufacturing small arms ammunition for use by the military forces of the United States under a cost-plus-a-fixed-fee contract with the United States and under the supervision of the Ordnance Department of the War Department. It is admitted by the pleadings that plaintiffs were all employees of defendant. Plaintiffs allege that defendant was engaged in interstate commerce and in the production of goods for interstate commerce within the meaning of the Fair Labor Standards Act of 1938,<sup>1</sup> and that they were employed in the production of goods for interstate commerce at agreed

salaries for a 40-hour week, with the understanding that for all hours which they worked over 40 per week they would be compensated at the rate provided by that Act of one and one-half times the regular rate of pay. Plaintiffs were all employed in defendant's Safety Department.

Defendant denied and still denies that it was engaged in interstate commerce or in the production of goods for interstate commerce, denied that plaintiffs were so employed or at agreed salaries for a 40-hour week or that they were entitled to overtime pay for time worked in excess of 40 hours per week. The defendant alleged and continues to contend that each of the plaintiffs was employed in a bona fide administrative capacity as that term is defined in the Fair Labor Standards Act with the result that that Act did not apply with respect to them. The defendant furthermore set up certain provisions of the Missouri Statute of Limitations as an affirmative defense. After judgment was entered a motion for rehearing was filed, requesting among other things that the cause be reopened to permit defendant to plead and prove the defenses made available to it under the Portal-to-Portal Act, which had become effective subsequent to the trial and shortly prior to the judgment. This motion was accompanied by an affidavit stating certain facts deemed relevant to those defenses. Plaintiffs answered this affidavit with a counter affidavit. The motion was denied. This appeal followed. We held the case under submission pending the determination of *Kennedy v. Silas Mason Co.*, 334 U.S. 249 (1948) because of the similarity of certain important issues in both cases. Upon the remand of the Kennedy-Silas Mason case we set aside the submission of this cause and set it for re-argument before this court en banc. The parties were granted leave to file supplemental briefs particularly directed to the applicability, if any, of either the Fair Labor Standards Act of 1938, supra; the Act of July 2, 1940, 54 Stat. 712, 50 U.S.C.A. App., Sec. 1171, 1172, and 5 U.S.C.A.,

Sec. 189(a); or the Walsh-Healey Public Contracts Act of June 30, 1936, 49 Stat. 2036, 41 U.S.C.A., Sec. 35 et seq. Pursuant thereto the cause was re-argued and supplemental briefs bearing upon the applicability of the above-mentioned Acts were filed.

Defendant contends (1) that plaintiffs were not engaged in the production of goods for interstate commerce within the meaning of the Fair Labor Standards Act, and were not included within the coverage of that Act, (2) that it was not engaged in interstate commerce or in the production of goods for interstate commerce within the meaning of the Fair Labor Standards Act, (3) that the ammunition produced by defendant for the United States was for use in the war and was not "goods" within the meaning of that Act; (4) that plaintiffs were not engaged in interstate commerce or in the production of goods for commerce, (5) that the burden was on plaintiffs to plead and prove the coverage of the Act, the hours worked, and that they were engaged in the production of "goods" as defined in the Fair Labor Standards Act, which burden was not sustained, (6) that plaintiffs were employed in a bona fide administrative capacity and were exempt from the provisions of the Fair Labor Standards Act, (7) that the judgment of the trial court is in any event excessive in that it (a) is based on the erroneous assumption that the salaries paid plaintiffs were base pay for a 40-hour week instead of a variable or 48-hour week, (b) includes in the computations of hours worked a one-half hour lunch period, and (c) includes as hours worked, time prior to the beginning of and following the ending of plaintiffs' regular work shifts, (8) that the claims of certain plaintiffs were barred by Sections 1012 and 1015 R.S. Mo. 1939, (9) that the provisions of the Portal-to-Portal Act of 1947 are binding in this case and defendant should have been given the opportunity to plead and sustain the defenses made available to it under the Act, and (10) that two of the plaintiffs died

while the cause was under submission and there has been no proper substitution and revival.

The trial court found that defendant was engaged in interstate commerce and in the production of goods for commerce within the meaning of the Fair Labor Standards Act and gave judgment for plaintiffs under that Act, including, as heretofore noted, the overtime claimed, liquidated damages, and attorney fees.

There is no serious dispute concerning the underlying facts. Defendant entered into a cost-plus-a-fixed-fee contract with the United States Government to operate and maintain the munitions plant in suit and to produce therein and therat small arms and ammunition in huge quantities for the United States Government. The Government acquired the site for the plant, erected all of the buildings and installed all of the machinery, to all of which it retained title. The Government furnished defendant with all raw materials or the funds with which to acquire them. The title to all raw materials and finished munitions remained in the Government. A large part of those materials were shipped to the plant from outstate, some by the Government and some on defendant's orders consigned to defendant. All those materials were unloaded at the plant by defendant's employees. Defendant manufactured those raw materials into arms and ammunition at the plant in Missouri. In doing so it had the actual physical possession of the material and products thereof, but all operations were under the direct supervision of representatives of the United States Government. All completed products were carefully inspected by the Government. And all of those products were shipped upon the order of the Government to places specified by it. Predominately, if not entirely, those destinations were beyond the confines of the State of Missouri. Those shipments were usually on Government bills of lading, but occasionally they were made on defendant's bills of lading. All of the finished products with one

exception were shipped at Government expense to points for use by it in the war. That exception consisted of small quantities of test ammunition sent to Purdue University and a point in Pennsylvania for test purposes. A by-product, scrap copper or brass, resulting from the making of shells, appears to have been transported in defendant's trucks to a nearby cartridge company on defendant's commercial bill of lading. This appears to be the only product resulting from defendant's manufacturing process which left the plant on other than Government bills of lading. The title to this by-product appears to have remained in the Government. All shipments from the plant were crated and loaded by defendant. Bills of lading and shipping papers were prepared by defendant's employees. The defendant by the terms of the contract was required to do all things necessary to the operation of the plant, to hire all employees, to inspect and check all materials by its own inspectors; before submitting the goods to the Government for acceptance, to keep records and books of account showing the cost of all labor, material and other expenditures, to pay employee contributions under the Federal Social Security Act, and to pay all state and local taxes, licenses or fees required by state law, including state compensation laws. Extensive railroad switching facilities were constructed on the plant site (which was a military reservation). These facilities were also owned by the Government, as well as the switch engines and similar equipment. This equipment was stated by defendant to have been manned and operated by defendant's employees. The defendant was designated in the contract as an independent contractor<sup>2</sup> but the Government had, as heretofore noted, the right to make any changes its representatives deemed

<sup>2</sup>From the contract, page 780 of the Record:

"It is expressly understood and agreed by the Contractor and the Government that in the performance of the work provided for in this contract, the Contractor is an independent contractor and in no wise an agent of the Government."

necessary in the method of performing the work and, as heretofore inferred, it paid all operating costs. Defendant's fixed fee was based upon the amount of the completed product produced. As many as 40,000 employees were at times engaged at the plant. All were engaged in the production of munitions for the Government under defendant's contract with the Government. More than six billion small arms cartridges were produced. The contract specifically provided that the provisions of the Walsh-Healey Act should apply to this contract.<sup>3</sup> These plaintiffs, as well as

<sup>3</sup>From the contract, page 783 of the Record:

"Article III-D—Walsh Healey Act.

"1. The following representations and stipulations pursuant to the Walsh-Healey Public Contracts Act (Act of June 30, 1936; 49 Stat. 2036; 41 USC 35-45), shall apply to the performance of this contract:

"(a) The Contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

"(b) All persons employed by the Contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: Provided, however, that this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

"(c) No person employed by the Contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor.

"(d) No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the Contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

"(e) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part hereof is to be performed shall be prima facie evidence of compliance with this subsection.

all other employees of defendant, were notified in a booklet given them at the commencement of their employment that overtime would be compensated for at the *rate* provided under the Walsh-Healey Act and the Fair Labor Standards Act.<sup>4</sup> The relationship between the Government and defendant in the operation of the plant was also described in this booklet.<sup>4</sup> As noted heretofore, defendant's answer admitted that plaintiffs were its employees. There was no issue presented concerning the propriety of the *rate* of pay under any Federal or State law. The controversy relates

"(f) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original Contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or under-payments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: Provided, that no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the United States of America.

"(g) The Contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

"(h) The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of \$10,000.00.

"2. Stipulation (b) of section 1 of this Article III-D with respect to wages is operative due to determination by the Secretary of Labor of prevailing minimum wage rates for the industry involved."

<sup>4</sup>From the booklet given employees, page 191 of the Record:

"The Saint Louis Ordnance Plant is wholly owned by the United States Government. The United States Cartridge Company is the operating agent."

From the booklet given employees, pages 203-204 of the Record:

to whether the Fair Labor Standards Act applies, whether plaintiffs are within the class of employees entitled to overtime under the Act, and, if so, the extent of that overtime, whether liquidated damages and attorney fees are recoverable, and whether defendant should have been permitted to amend its answer setting up defenses under the Portal-to-Portal Act.

#### "Wages of Employees.

"It is the policy of the Saint Louis Ordnance Plant to pay each employee a wage in keeping with the rates determined by the Ordnance Department of the United States Army for ammunition production. Since our product is for our United States Government, and since each employee is a part of our government, it is naturally expected that each employee will strive diligently to turn out an honest day's work for a fair wage."

"The company pays you your wages but it is immediately repaid by the United States Government.

"In the final analysis, your wages come from the United States Government, whose only source of income is taxes collected from you and all other citizens."

"The United States Cartridge Company is merely managing the plant for the Federal Government.

"An employee's remuneration consists not only of the money he receives each payday, but also the Company's contribution to the Social Security, Workmen's Compensation for accident protection, and Unemployment Compensation funds."

From the booklet given employees, page 206 of the Record:

#### "Standard Hours of Work.

"There will be eight hours in any working day, and forty hours will constitute a working week. To meet the schedule required of us by the National Defense Program, it will be necessary to employ three shifts on production operations. When production demands require a longer work day, or longer work week, the Company will pay the legal overtime rate as provided under the Walsh-Healey Act, and the Fair Labor Standards Act. When three shifts are operating there will be rotation of the first, second and third shifts every two weeks. A lunch period will be allowed on each shift and will be paid for by the Company, that is, no deduction will be made for this lunch period."

#### "Payment of Overtime:

"Time and one-half will be paid in excess of eight hours per day or forty hours per week. Time and one-half also is paid for authorized work on Sunday and national holidays, except in departments or occupations where the established schedule requires seven days continuous operations. This means that overtime is paid for Sunday work and holidays on repair, maintenance, mechanical and new routine process operations, but not for work such as watching, plant protection, or continuous procedure operations. The following national holidays—New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, will be observed."

"It will be the policy of the Company to avoid work on Sundays and Holidays as far as possible. However, since we are a part of the National Defense program, we shall have to adjust our schedule according to the needs of the situation."

There are many cases bearing upon the problem with which we are confronted.<sup>5</sup> No good purpose will be served by an analysis of each of them here, since it is obvious from the opinion of the Supreme Court in *Kennedy v. Silas Mason Company*, *supra*, that that court will in due time authoritatively determine the correctness of the various conclusions expressed in those cases.

*Holland v. Haile Gold Mines*, 41 F. Supp. 641; *Walling v. Haile Gold Mines, Inc.*, 136 F.2d 102; *Fox v. Summit King Mines*, 143 F.2d 926; *St. Johns River Shipbuilding Company v. Adams*, 164 F.2d 1012, 13 Labor Cases, Par. 64,171; *Crabb v. Welden Brothers*, 164 F.2d 797; *Clyde v. Broderick*, 52 F. Supp. 533; *Clyde v. Broderick*, 144 F.2d 348; *Anderson v. Federal Cartridge Corp.*, 13 Labor Cases, Par. 64,072 (D.C. Minn.); *Barksdale v. Ford, Bacon & Davis, Inc.*, 70 F. Supp. 690 (E.D. Ark.); *Clyde v. Broderick*, 52 F. Supp. 533 (D. Colo.), reversed on other grounds, 144 F.2d 348; *H. B. Deal & Company, Inc., v. Leonard*, 210 Ark. 512, 196 S.W.2d 991; *Dickenson v. Trojan Powder Co.*, not officially reported, D. C. N. D. Ohio, W.D., April 18, 1944; *Diggins v. Hazeltine Electronics Corp.*, 70 F. Supp. 686 (S. D. N. Y.), affirmed 163 F.2d 100; *Hays v. Hercules Powder Co.*, 13 Labor Cases, Par. 64,123 (D. C. W. D. Mo.); *Kennedy v. Silas Mason Company*, 68 F. Supp. 576, affirmed 70 F. Supp. 929 (W.D. La.), affirmed 164 F.2d 1016, 13 Labor Cases, Par. 64,170; *Kruger v. Los Angeles Shipbuilding and Drydock Corp.*, 12 Labor Cases, Par. 63,660 (D. C. S. D. Calif.); *Lynch v. Embry-Riddle Co.*, 63 F. Supp. 992 (S.D. Fla.); *Mallock v. Sanderson & Porter*, 7 Labor Cases, Par. 61,806 (Cir. Ct. Ark.); *Patton v. Roane-Anderson Co.*, 14 Labor Cases, Par. 64,245 (D. G. E. D. Tenn.); *Raymond v. Parrish*, 30 S.E.2d 689 (Ga. App.); *Ritch v. Puget Sound Bridge & Dredging Co.*, 60 F. Supp. 670 (W.D. Wash.), reversed on other grounds 156 F.2d 334; *Selby v. J. A. Jones Construction Co.*, 14 Labor Cases, Par. 64,246 (D. C. E. D. Tenn.); *Stewart v. Kaiser Company, Inc.*, 71 F. Supp. 551 (D. Ore.); *Torres v. Lock Joint Pipe Co.*, Prentice-Hall Wage & Hour Service, Vol. 1, Par. 10,189.8 (D.C. Puerto Rico); *Trefts v. Foley Bros., Inc.*, 7 Labor Cases, Par. 61,743 (D. C. W. D. Mo.); *Young v. Gellex Corporation*, 14 Labor Cases, Par. 64,244 (D. C. E. D. Tenn.); *Cody, et al., v. Dossin's Food Products*, 156 F.2d 678; *Jones v. Springfield Missouri Packing Co.*, 45 F. Supp. 997; *Gibson v. St. Paul Fire & Marine Insurance Co.*, 184 S.E. (West Va.) 562; *Tripp v. United States Fire Ins. Co.*, 44 Pac.2d (Kansas) 236; *Bell v. Porter*, 159 F.2d 117; *Jackson v. Northwest Airlines* (D.C. Minn., Oct. 9, 1947), 75 F. Supp. 32; *O'Riordan v. Helmers, Inc.*, 6 W.H. Cases 961 (N.Y.C. Ct. 1947); *Ware v. Goodyear Corp.*, 6 W.H. Cases 160 (S.D. Ind., 1946); *Swettman v. Remington Rand*, 6 W.H. Cases 336 (S.D. Ill., 1946); *Moehl v. Dupont de Nemours & Co.*, 6 W.H. Cases 638 (N.D. Ill., 1947), 12 Labor Cases, Par. 63,545; *Blazier v. Western Pipe & Steel Co.*, 6 W.H. Cases 637 (S.D. Cal., 1946); *Tiller v. Anchor Optical Corp.*, 6 W.H. Cases 655 (S. D. N. Y., 1947); *Roland v. United Airlines*, 6 W.H. Cases 663 (N.D. Ill., 1947); *Belanger v. Hofeman Bros.*, 6 W.H. Cases 616 (D. Maine, 1947); *Umthun v. Day & Zimmerman, Inc.*, 16 N.W.2d 258 (S. Ct. Iowa, 1944); *Timberlake v. Day & Zimmerman*, 49 F. Supp. 28 (S.D. Iowa, 1943); *Lasater v. Hercules Powder Co.*, 7 W.H. Cases 150 (E.D. Tenn., 1947); *McCusky v. Norden, Inc.*, 7 W.H. Cases 142 (N. Y. S. Ct., 1947); *Simkins v. Elmhurst Construction Co.*, 181 Misc. 791, affirmed 181 Misc. 793, affirmed 268 App. Div. 858; *Steiner v. Pleasantville Constructors*, 181 Misc. 798, affirmed (modified on other grounds) 182 Misc. 66, affirmed 269 App. Div. 798; *Henderson v. Bechtel-McCormic Corp.*, 7 W.H. Cases 107 (N.D. Ala., 1947); *Fox v. Summit Hill*, 143 F.2d 926 (9th Cir.); *Ware v. Goodyear Engineering Corp.*, 6 W.H. Cases 160 (S.D. Ind.); *Moehl*

As to the application of the Walsh-Healey Act. It is clear and undisputed that all of the articles manufactured by defendant were manufactured pursuant to a contract between defendant and an agency of the United States for the manufacture of "materials, supplies, articles and equipment in an amount exceeding \$10,000.00"; and that plaintiffs and all other employees of defendant were at all times engaged exclusively "in the manufacture of materials, supplies, articles and equipment used in the performance of the contract" between defendant and the United States.

Which of these two acts did Congress intend should apply to a cost-plus-a-fixed-fee contractor manufacturing munitions of war exclusively for the United States under contract with the United States? If a portion of defendant's business had been devoted to the "production of goods for commerce" for others than the United States, the question whether the Walsh-Healey Act should apply to the employees engaged in the production of the munitions under contract with the United States and the Fair Labor Standards Act should apply to other employees would be a proper subject for consideration. But such is not the case here. All goods produced were for the United States under contract therewith. It has not been suggested and could not be reasonably contended that the Walsh-Healey Act was repealed by the passage of the Fair Labor Standards Act, in view of the amendment of the former subsequent to the passage of the latter, the recognition of the Walsh-Healey Act in the National Defense Act of July 2, 1940.

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v. *Dupont de Nemours & Co.*, 6 W.H. Cases 638 (N.D. Ill.), 12 Labor Cases, Par. 63,545; *Bailey v. Porter*, 6 W.H. Cases 1017 (N.D. Ill. 1947); *Southern California Freight Lines v. Davis*, 167 F.2d 708; 14 Labor Cases, Par. 64,479; *Harrington v. Empire Construction Co.*, 167 F.2d 389; 14 Labor Cases, Par. 64,455; *Alfred Kovacs et al., v. Metropolitan Life Insurance Company, et al.*, 14 Labor Cases, Par. 64,480 (S. D. N.Y., April 20, 1948).

\*Walsh-Healy Act, Sec. 35, Title 41 U.S.C.A.

(Sections 1171-1172, Title 50 App. U.S.C.A.),<sup>7</sup> and Executive Order 9001 of The President, issued December 29, 1941, 6 Fed. Register 6787.<sup>8</sup>

The Walsh-Healey Act is not an exercise by Congress of regulatory power over private industry or employment, nor an act of general application to industry. *Perkins v. Lukens Steel Co.*, 310 U.S. 113; *Endicott-Johnson Corp. v. Perkins*, 317 U.S. 501. The purpose of the Act was, as pointed out in *Endicott-Johnson Corp. v. Perkins*, to raise labor standards for the segment of industry doing business with the Government. To accomplish that purpose, it specified, as the terms on which the Government would do business with private concerns, the hours of employment and that overtime should be paid for all hours in excess of 40 hours per week. It applied irrespective of whether the workers employed in producing the goods contracted for were engaged in producing goods "for commerce" or exclusively in intra-state commerce. The sole criterion of application in that regard was that the goods were to be produced for the Government. And with respect to hours of work and rates of pay, the Walsh-Healey Act was more favorable to labor than the later Fair Labor Standards Act, in that there was no progressive reduction of weekly hours of labor from 44 hours to 40, as in the Fair Labor Standards Act, and there was no minimum wage fixed at

<sup>7</sup>That Act provides: "That no contract entered into pursuant to the provisions of this section which would otherwise be subject to the provisions of the Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (49 Stat. 2036; 41 U.S.C. secs. 35-45), shall be exempt from the provisions of such Act [sections 35-45 of Title 41] solely because of being entered into without advertising pursuant to the provisions of this section."

<sup>8</sup>That Order provides: "No contract or modification or amendment thereof, shall be exempt from the provisions of the Walsh-Healey Act (49 Stat. 2036) because of being entered into without advertising or competitive bidding, and the provisions of such act, the Davis-Bacon Act, as amended (49 Stat. 1011), the Copeland Act, as amended (48 Stat. 948), and the Eight Hour Law, as amended by the Act of September 9, 1910 (Public No. 781, 76th Congress) if otherwise applicable shall apply to contracts made and performed under the authority of this Order."

a figure comparatively low if compared with wages actually being paid in manufacturing industries. The Walsh-Healey Act fixed the wage to be paid at not less than the minimum wage (to be determined by the Secretary of Labor) for persons employed on similar work in the locality where the goods for the Government were to be produced. The Fair Labor Standards Act had also as its purpose the improvement of living conditions and labor standards. It was designed and intended to affect private industry engaged in interstate commerce. Its provisions relative to minimum wages and hours of labor for those employed in making goods for the United States were unnecessary as provision therefor equal or more advantageous to labor had already been made by the Walsh-Healey Act. The Fair Labor Standards Act further provided that the employee might recover liquidated damages and attorney fees. But the Walsh-Healey Act had already provided sanctions for the violation by those furnishing goods to the United States of its provisions relative to hours of employment and rates of pay, and had already provided that any wages due employees engaged in producing goods for the United States might be withheld by the United States and paid to the employee or recovered in the name of the United States by the Attorney General and paid to the employee. Thus, the Walsh-Healey Act had provided for the collection of any wages due employees such as plaintiffs without cost to them and had provided sanctions more severe in some respects than those of the Fair Labor Standards Act for failure to pay without compulsion.

The Wage and Hour Division of the Department of Labor, as Amicus Curiae, suggests that both Acts may be applicable and that plaintiffs may have the benefit of the most favorable provision of either—in this instance, the liquidated damages and attorney fee provisions of the Fair Labor Standards Act. We are not impressed with the view that Congress intended that an employee might elect

which of these Acts would apply to his individual employment or claim for compensation, with the attending confusion in computing wages and the collection of claims therefor. Nor are we impressed with the view that Congress intended that when an industry was engaged in producing munitions of war for the United States under a cost-plus-a-fixed-fee contract and failed to pay an employee engaged in such production his proper wages, that the United States should be required to pay him not only his unpaid wages but also an amount equal thereto as liquidated damages, and, in addition, his attorney fees, when another method of safe-guarding the employees' rights had been provided which does not entail such a penalty against the United States. We are of the opinion that the two Acts are sufficiently divergent that both may not apply at one and the same time, that the Walsh-Healey Act was intended by Congress to apply to the employees of manufacturers engaged in producing munitions of war for the United States, and that under the Walsh-Healey Act liquidated damages and attorney fees may not be recovered by the employee.

It has been suggested that the National Defense Act of July 2, 1940,<sup>1</sup> suspended the operation of the Fair Labor Standards Act and, a fortiori, the Walsh-Healey Act. The National Defense Act was passed in the interest of national defense, to provide for the production of war materials of all kinds necessary to the successful prosecution of the war. Summarized, it authorizes the Secretary of War to provide for the construction of plants and facilities for the development, manufacture, maintenance, and storage of military equipment, munitions and supplies, and to provide for the purchase, manufacture, shipment, and storage of such supplies. It carries a provision that the regular working hours of laborers and mechanics employed by the Department of the Army, who are engaged in the manufacture, or production, of military equipment, munitions, or supplies, shall

be eight hours per day or forty hours per week during the period of the national emergency and that overtime shall be compensated for at one and one-half times the regular rate of pay. But it contains a proviso, as heretofore noted, that no contract which would otherwise be subject to the provisions of the Walsh-Healey Act should be exempt therefrom merely because contracts entered into pursuant to the authority of the National Defense Act were made without advertisement. We have indicated above that we construe this latter proviso as a recognition by Congress of the continued effectiveness of the Walsh-Healey Act.

Our attention has been directed to our opinion in *Day & Zimmerman v. Reid*, 168 F.2d 356, as authority for plaintiffs' right to recover liquidated damages and attorney fees under the Fair Labor Standards Act. The defense interposed to plaintiffs' claim in that case was the Portal-to-Portal Act of 1947. The parties stipulated the amount due plaintiffs under the Fair Labor Standards Act, subject to a determination by the court of plaintiffs' right to recover that amount in view of the defense interposed under Section 9<sup>o</sup> and 11<sup>th</sup> of the Portal-to-Portal Act. The trial court construed and applied the Portal-to-Portal Act. Our review was limited to the correctness of the trial court's action in that regard. No question was raised concerning the application of the Fair Labor Standards Act, the Walsh-Healey Act, or the National Defense Act, and no such question was decided. That case is therefore no authority in the present case.

Since the district court did not have jurisdiction of the cause under the Fair Labor Standards Act and since the Walsh-Healey Act does apply and plaintiffs may not maintain this action under the Walsh-Healey Act, the cause is reversed.

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\*29 U.S.C.A., Sec. 258.

: 29 U.S.C.A., Sec. 260.

JOHNSON, Circuit Judge, concurring separately.

On September 8, 1939, the President proclaimed the existence of "a national emergency with respect to "the strengthening of our national defense within the limits of peace-time authorizations." Proclamation 2352, 3 CFR, 1939 Supp., pp. 59, 60.

The Congress took cognizance of the emergency and sought to "expedite" the strengthening of our national defense, by grants of additional powers to the President, the Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury, "during the national emergency declared by the President \*\*\* to exist," for the purpose of facilitating the obtaining of necessary implements, munitions, etc., for the military, naval, and coast-guard services.

Two measures, popularly known as the National Defense Acts, were enacted in June and July, 1940. The first of these, Act of June 28, 1940, 54 Stat. 676, ch. 440, 50 U.S.C.A. App. §1151 et seq., had relation primarily to the naval and the coast-guard services, but it contained the following general provision: "During the national emergency declared by the President on September 8, 1939, to exist, the provisions of the law prohibiting more than eight hours' labor in any one day of persons engaged upon work covered by Army, Navy, and Coast Guard contracts shall be suspended." 54 Stat. 678, 679, § 5(b), 50 U.S.C.A. App. §1155(b). The second of the National Defense Acts, Act of July 2, 1940, 54 Stat. 712, ch. 508, 50 U.S.C.A. App. §1171 et seq., 5 U.S.C.A. § 189a, had application to the War Department.

Under subsection (a) of §1 of this Act, the Secretary of War was given power, without the necessity of resorting to advertising, to provide, among other things, for the

purchase or manufacture of military equipment, munitions, and supplies, and for shelter, "under such conditions as he may deem necessary." He was similarly empowered to purchase or to construct munitions plants, as well as to provide "Government-owned facilities at privately owned plants." Subsection (b) expressly authorized him to operate any such plants acquired or constructed and any facilities so furnished, "either by means of Government personnel or through the agency of selected qualified commercial manufacturers under contracts entered into with them." There was a further general provision in section 1, authorizing him to make such contracts or such amendments or supplements to existing contracts, "as he may deem necessary to carry out the purposes specified in this section."

These were extraordinary powers, intended to be granted for a limited period only, and designed to accomplish an emergency purpose. The scheme, which is involved in the present situation, of producing munitions in government-owned plants, "through the agency of selected qualified commercial manufacturers," on the basis of cost plus a fixed fee for carrying on the operations, with title to both the materials used and the products manufactured resting at all times in the United States, was admittedly a novel and revolutionary set-up in the field of American industrial life. The "Statement of Labor Policy," issued jointly by the War and Navy Departments on June 22, 1942, with the approval of the President of the American Federation of Labor and the Chairman of the Congress of Industrial Organizations, characterized it in this language: "The industrial units thus created are unique. \* \* \* These plants embody a new and tripartite relationship among Government, labor, and management."

The commercial operating agency was not economically affected by the production costs and so had no direct con-

cern about the wages and overtime rates that might be paid in the plant. These questions therefore were matters which the Government of necessity was required to resolve. If it could be said to have been the intention of Congress to make the Walsh-Healey Public Contracts Act, 49 Stat. 2036, 41 U.S.C.A. §35 et seq., govern the hybrid relationship involved, the scale of minimum wages and the rate of overtime pay were matters over which the Secretary of Labor had generally the power of determination and control.

I can see some sound reasons to doubt that the National Defense Acts could have intended to permit of any possibility of a slowing of the Secretary of War's and the Secretary of the Navy's emergency defense efforts through a necessary resort to the normal processes of investigation, determination, etc. by the Secretary of Labor, as the latter would have the power to compel them to do under the Walsh-Healey Act. Moreover, Congress did not expressly declare that the unique, hybrid relationship, which it was permitting to be created as an emergency measure, was within the operation of the Walsh-Healey Act. In fact, it specifically refused to make a general declaration that all contracts made by the Secretary of War under section 1 of the Act of July 2, 1940, should be subject to the provisions of the Walsh-Healey Act. The Conference Committee Report on the Bill had contained the following statement (Cong. Rec., Vol. 86, Part 8, p. 8901): "The conference agreement \*\*\* provides that instead of all contracts under the section being subject to the provisions of the Walsh-Healey Act, no such contract which would otherwise be subject to such Act should be exempt from its provisions solely because it was entered into without advertising." And pursuant to the conference agreement, section 1 of the Act, on final passage, was made to contain the simple proviso, "That no contract entered into pursuant to the pro-

visions of this section which would otherwise be subject to the provisions of the (Walsh-Healey) Act . . . shall be exempt from the provisions of such Act solely because of being entered into without advertising pursuant to the provisions of this section."

Parenthetically, it may be observed that there, of course, would be contracts made by the Secretary of War, in fields apart from that of the operation of the government-owned munitions plants, which normally and regularly would be subject to the provisions of the Walsh-Healey Act, except as it might be sought to be contended that they had been taken out of the operation of that Act because they had been made without advertising. The proviso quoted above would preclude the making of any such argument.

Beyond the failure expressly to provide that the hybrid relationship involved in the operation of a government-owned munitions plant should be governed by the Walsh-Healey Act, the Act of July 2, 1940, as I have already pointed out, further used such terms in relation to the scope of the Secretary of War's contracting powers as, "under such conditions as he may deem necessary" and "as he may deem necessary to carry out the purposes specified in this section." If a test of these powers should have arisen in a situation indicating the impossibility or impracticality, in attempting to make prompt defense preparations, of having the wage scales and overtime rates fixed in these plants except by War Department action, I should doubt that any court would have difficulty in seeing in the nature and the language of the Act, as I have discussed them above, a reservoir of power in the Secretary of War so to act, independent of the wage and hour provisions of any other statute.

The Secretary of War's actions, under this concept of the statute, might perhaps be subject to the control of an

Executive Order issued by the President, and, of course, they necessarily would be so after the War itself began in 1941. The only other limitation that probably would exist on the Secretary's power was the clear indication of a congressional policy to have overtime rates paid for work in excess of 40 hours per week, as reflected in the express command in section 4(b) of the Act, 5 U.S.C.A. §189a, applicable to any direct operation of defense plants by the Secretary of War himself, that "the regular working hours of laborers or mechanics employed by the War Department, who are engaged in the manufacture or production of military equipment, munitions, or supplies shall be eight hours per day or forty hours per week during the period of any national emergency declared by the President to exist: *Provided*, That under such regulations as the Secretary of War may prescribe, such hours may be exceeded, but compensation for employment in excess of forty hours in any workweek, computed at a rate not less than one and one-half times the regular rate, shall be paid to such laborers and mechanics."

But I do not think it necessary to discuss this aspect of the question further in the present case. Whether the Secretary of War had power generally under the Act of July 2, 1940, to fix wage scales and overtime rates and rights for the employees in the hybrid relationship involved in these munitions plants; as I have referred to above, without regard to the provisions of the Walsh-Healey Act, I agree that the provisions of the Walsh-Healey Act are in any event controlling of the employees' rights here. If the Secretary of War had such plenary powers under the Act of July 2, 1940, as I have discussed, the provisions of the Walsh-Healey Act are nevertheless controlling in the present situation, because the War Department, in its contract with the operator of the plant, specifically made the provisions of that Act applicable to the wage and over-

time rights of the employees, as the Secretary of War would have the right to do under the circumstances.

If the Act of July 2, 1940, did not give the Secretary of War such plenary powers in the defense situation as I have discussed, the Walsh-Healey Act, and not the Fair Labor Standards Act, still clearly is controlling here, as a matter of general application in the field involved. In the enactment of the Walsh-Healey Act, Congress, I think, intended to constitute such employees as would be engaged in producing supplies or goods directly for the Government under an express contract, as a special legislative class, and, through the force of the Government's contracting power, to control their hours of labor, their rate of minimum pay, and their overtime rights, to the extent that it deemed it necessary in this field. It did not relate its jurisdiction in the field to any test of commerce, and the question of commerce therefore, in my opinion, has nothing to do with the rights of the class.

The Walsh-Healey Act establishes a special and complete labor policy of its own. It is intended to prevent any working of a covered employee for more than eight hours a day or forty hours a week, except with the permission of the Secretary of Labor, 41 U.S.C.A. §35. Unless the Secretary of Labor permits overtime work to be done, the employer may not allow his employees to engage in any. If the Secretary permits overtime work, he has the right to fix the rate that shall be paid therefor, "which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected." Id., §40. Minimum wages must be paid the employees of "not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in

the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract." Id. §35. Where the contracting party otherwise has been engaged generally in commerce or in the production of goods for commerce, his wage scale presumably will have met the standards prescribed by the Fair Labor Standards Act, but manifestly the minimum wages determined by the Secretary of Labor to be applicable in the performance of some Government contract may exceed the Fair Labor Standards Act's requirements.

The Walsh-Healey Act further specifically recognizes that special elements of public interest may exist in the performance of such a Government contract, which command consideration, and it accordingly empowers the Secretary of Labor to make exceptions or dispensations with respect to the provisions of the Act in necessary situations, "in the public interest or to prevent injustice and undue hardship" or where otherwise it might "seriously impair the conduct of Government business." Id. §40.

All of these provisions set up standards and requirements, which are without any relationship to the Fair Labor Standards Act. And an employee to whom the Walsh-Healey Act has application cannot claim the right to come generally under the Fair Labor Standards Act, for that would nullify the power of the Secretary of Labor to exercise his judgment with respect to some of the elements which Congress recognized that he might find it necessary to give consideration to, in the practical performance of, or in meeting a public need under, a Government contract.

The employees here predicate and seek to recover overtime rights on the basis of the Fair Labor Standards Act. But whatever rights they may have had in the situation, as I have pointed out, are derived from the Walsh-Healey

Act, under the contract incorporating its provisions, and not from the Fair Labor Standards Act. The incongruity of their attempt to invoke the Fair Labor Standards Act is readily apparent, I think, when the fact is taken into account that, under the Walsh-Healey Act, there could be no overtime work unless the Secretary of Labor gave his permission thereto, and that, except during the existence of Executive Order No. 9240, dated September 9, 1942, 7 F.R. 7459, as amended by Executive Order No. 9248, dated September 17, 1942, 7 F.R. 7419, which, as a war measure, limited all overtime payments in industries related to the prosecution of the war to not more than one and one-half times the regular wage rates, the Secretary of Labor, as a condition of granting such permission, could require the payment of overtime rates in excess of this amount, if he saw fit. The situation under the Walsh-Healey Act therefore was not one that was subject to the automatic overtime rate of the Fair Labor Standards Act. And whether overtime rights stemming from the Walsh-Healey Act might have been fixed in some situation at one and one-half times, or double, or treble, the regular wage scale, there would be no more right in the one case than in the others to use the Fair Labor Standards Act as a vehicle for their collection.

It must be remembered that Congress provided the Walsh-Healey Act with its own system of sanctions and procedure for accomplishing the objectives and vindicating the rights which it was intended to establish. That the Walsh-Healey Act does not permit of a direct suit by an employee on the contract between the Government and the employer may be an argument sentimentally in favor of why the Fair Labor Standards Act ought to apply, but it is hardly sound rationale legally for holding that it does. Nor does the fact that the munitions produced may have been shipped in interstate commerce weigh in favor of the

application of the Fair Labor Standards Act, as against the inexorable fact that the Walsh-Healey Act stands as a special statute, for a specific class, involving indicated factors of consideration in public interest and governmental functioning, not made applicable to the general field of the Fair Labor Standards Act, and to which the commerce test therefore has no relation.

It might further be observed that, if Congress had intended the employees of the approximately 100 government-owned munitions plants, that were established, to have rights beyond those granted by the National Defense Acts or the Walsh-Healey Act, and to be able generally to recover double damages and attorneys' fees, it hardly seems reasonable to suppose that it would have left the situation so that those working in some plant, which might by chance be making guns, ammunition, or other supplies entirely for use at some training camp or on some rifle or artillery range, existing within the same state where the plant was located, would be precluded from such benefits on the basis of a commerce test, when it had the power, and there would seem to be no reason not, to have treated them equally with the employees of other such munitions plants. It might also be added that, if the Secretary of War had no such plenary powers under the Act of July 2, 1940, to fix wage rates and overtime rights, as I have initially suggested, but he was required to act in relation to such other statutes as existed and to guide his actions by whichever was applicable, the provision which he made in the contract, subjecting it to the obligations under the Walsh-Healey Act and not the Fair Labor Standards Act, could properly be viewed as an administrative interpretation and accorded the weight to which it normally would be entitled, in the emergency situation in which it was necessary for him to resolve the question and to act.

I can see no basis for any right in the situation to maintain an action under the Fair Labor Standards Act, and I agree that the suit should be dismissed.

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Sanborn, Woodrough and Riddick, Circuit Judges, besides joining in the Court's official opinion, concur also in the foregoing separate opinion.

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IN THE

1007

**United States Court of Appeals,  
EIGHTH CIRCUIT,  
IN BANC.**

**THE UNITED STATES CARTRIDGE  
COMPANY, a Corporation,  
(Defendant) Appellant,**

vs.

**R. M. POWELL et al.,  
(Plaintiffs) Appellees.**

No. 13,663.  
Civil.

Appeal from the District Court of the United States for the  
Eastern District of Missouri.

**APPELLEES' PETITION FOR A REHEARING AND  
TO MODIFY THE JUDGMENT.**

Now come the appellees by their attorney and respectfully petition the Court to set aside the opinions and judgment heretofore filed and entered herein, and to grant appellees a rehearing thereof, or, in the alternative, to modify the same in respect to costs for the following reasons and on the following grounds:

I.

Material matters of fact and law were inadvertently overlooked by the Court in the following particulars:

(a) In respect to the Fair Labor Standards Act and the Walsh-Healey Act the opinion, p. 15, states:

"We are of the opinion that the two Acts are sufficiently divergent that both may not apply at one and the same time."

This is the first time since the two enactments have been in effect that any Court has made any such pronouncement. No authority is cited for such a construction, and it is in conflict not only with administrative interpretation, but with all Federal decisions on the subject. *Lasater v. Hercules Powder Co.*, 73 F. Supp. 264; *Walling v. Patton-Tulley Transportation Co.*, 134 F. (2d) 945; *Jackson v. Northwest Airlines*, 75 F. Supp. 32, l. e. 38, top second column; *Pesadas v. National City Bank*, 296 U. S. 497, l. e. 503.

The case of *Lasater v. Hercules Powder Co.*, *supra*, is directly in point. It was an action for overtime compensation under the Fair Labor Standards Act. The defendant disclaimed liability among other reasons because of the contention that the plaintiffs were covered by the Walsh-Healey Act and other labor laws, and the Court expressly ruled that coverage by the Walsh-Healey Act, or any of the other Public Contract Acts, did not preclude a right of action under the Fair Labor Standards Act. In so ruling, the Court said (l. e. 268):

"From an examination of the Eight Hour Law, the Davis-Bacon Act, and the Walsh-Healey Act, together with the Congressional history of labor laws raising standards of pay and working conditions, the conclusion is quite evident that the intended coverage of the Fair Labor Standards Act is not restricted because of these previous enactments. I deem it unnecessary to undertake to analyze the premises resulting in this conclusion.

"The Fair Labor Standards Act is applicable to work under government contracts. *Walling v. Patton-Tulley Transp. Co.*, 6 Cir., 134 F. 2d 945."

The same principle was ruled by the Sixth Circuit in *Walling v. Patton-Tulley Transportation Co.*, 134 F. (2d)

945, in a case involving the matter of reconciling the Fair Labor Standards Act with the Federal Eight-Hour Law, which is also applicable to employees working on Government contracts. In holding that these Acts were not repugnant, and that they were both valid and enforceable, the Court of Appeals for the Sixth Circuit said (l. c. 948):

“We are unable to agree with this conclusion. Repeals by implication are not favored and a later law will not be construed to repeal one enacted prior thereto unless the two acts are so clearly repugnant that they may not easily be reconciled. If both statutes can be made effective by reasonable construction, such construction will be adopted. (Citing cases.)

“We perceive no difficulty in the reconciliation of the Eight-Hour Law amendment with the Fair Labor Standards Act. The one limits employment at basic pay to 40 hours a week, the other deals solely with daily employment of men in certain classifications, and limits such employment at basic pay to 8 hours a day. No difficulty will be perceived in complying with both statutes,—giving overtime pay for work in excess of the weekly maximum, in the one case, and overtime pay for work in excess of the daily maximum, in the other.”

See also C. C. H., Labor Law Reports, 4th Ed., Vol. 3, Sec. 26011, where it is said:

“However, coverage under a government contracts law and coverage under the Fair Labor Standards Act are by no means mutually exclusive. On the contrary, cumulative application of both types of laws to employees of government contractors who are engaged in interstate commerce is in harmony with the common objectives pursued by Congress in enacting both types of laws. The purposes of the Fair Labor

Standards Act, which prescribes a certain minimum wage, are no more impaired by a government contract fixing the higher prevailing wage prescribed by the Secretary of Labor than by any individual or collective agreement fixing a wage in excess of the FLSA minimum rate. Both types of statutes must be complied with under circumstances showing engagement in interstate commerce, a government contractor is not excused from compliance with the Fair Labor Standards Act whenever the standards set by the latter are stricter."

That coverage under the Walsh-Healey Act does not exclude appellees from coverage under the Fair Labor Standards Act can also be inferred from the language of the two enactments. Section 18 of the Fair Labor Standards Act, 41 USCA 218, expressly provides that no provision of the Act shall exclude noncompliance with any other Federal or State law or municipal ordinance relating to wages and hours. Section 13, 29 USCA 213, excludes certain employees from the scope of the Act because they are regulated under other statutes, to-wit: Subparagraph 4 excludes employees of carriers by air subject to the provisions of Title II of the Railway Labor Act; (b) (1) exempts employees subject to Section 304 of Title 29, being the Motor Carriers Act; and (b) (2) exempts employees subject to Sections 1 to 27 of Title 49, being the Interstate Commerce Act. We submit that the omission of any reference to the Walsh-Healey Act indicates clearly that the employees subject to that Act are not exempted from the Fair Labor Standards Act. Further, by an amendment to the Walsh-Healey Act, approved May 13, 1942, 41 USCA 35 (e), Congress provided an exemption from the overtime provisions when an employee had entered into an agreement with his employer "pursuant to paragraphs 1 and 2 of Subsection (b) of Section 7 of an Act entitled 'Fair

Labor Standards Act of 1948." Congress thus recognized that certain employees came within the coverage of both Acts, and amended the Walsh-Healey Act so as to harmonize it with the Fair Labor Standards Act.

It is universally ruled that repeal or suspension of a statute by implication is not favored, and that a law with no express repealing or suspending clause will not be so construed unless the two laws are so clearly repugnant that no other conclusion can reasonably be drawn. See Posatas v. National City Bank, 296 U. S. 497, at page 503, where the Supreme Court said:

"The cardinal rule is that repeals by implication are not favored. Where there are two acts upon the same subject, effect should be given to both if possible."

And see discussion of this proposition under Point III, pp. 15-20 of appellees' Supplemental Brief herein. Also under Point II, pp. 8-11 of Supplemental Brief for the Administrator of the Wage and Hour Division.

The above cases, particularly the Lasater and the Walling cases, are not discussed in the Court's opinion, which is in direct conflict therewith.

The only reason given by the Court for its ruling that the two acts cannot "apply at one and the same time" is "the attending confusion in computing wages and the collection of claims therefor." (Opinion p. 14.) There is no evidence of any such confusion in this record, and no claim by appellant of any accounting difficulties. It professed to operate under both laws. See its own booklet (R. 206), where it advised all employees "The Company will pay the legal overtime rate, as provided under the Walsh-Healey Act and the Fair Labor Standards Act." Employees were grouped under the Walsh-Healey Act

pursuant to the Regulations of the Secretary of Labor, and under the Fair Labor Standards Act pursuant to the Regulations of the Labor Administrator, and paid accordingly. There was no confusion.

The Court further suggests disapproval of the "United States being required to pay liquidated damages and \* \* \* attorney's fees" (Opinion p. 14). It is obvious, of course, that the United States is not required to pay anything under this judgment. The judgment debtor is the appellant, who admittedly is the employer in this case. Whether appellant will be entitled to reimbursement against the United States where the liability accrued because of its fault in failing to obey the Fair Labor Standards Act, and Executive Order No. 9301, infra, is a matter for the General Accounting Office to decide.

We further submit that the incurrence of labor costs as required by the provisions of the Fair Labor Standards Act was not only with the approval of, but by express direction of the United States Government. (See Executive Order No. 9301, signed by the President February 9, 1943, 8 Fed. Reg. p. 1825, United States Code, Supp. III, 1941-43, Title 29, Labor, Section 207 [not USCA], printed in full in Appendix to this Petition.) By this directive the President, in order to meet the manpower requirements of the armed forces, directed all departments and agencies of the Federal Government to require their contractors to establish a forty-eight-hour minimum work week in the war plants, and it was by virtue of this order that these appellees were required to work a six-day week, and it was further provided in the order that it should not be "construed as suspending or modifying any provision of the Fair Labor Standards Act." We quote paragraph 5 of the order so providing:

"Nothing in this Order shall be construed as superseding or in conflict with any Federal, State or local

law limiting hours of work or with the provisions of any individual or collective bargaining agreement with respect to rates of pay for hours worked in excess of the agreed or customary workweek, nor shall this Order be construed as suspending or modifying any provision of the Fair Labor Standards Act (Act of June 25, 1938; 52 Stat. 1060; 29 U. S. C. 201, et seq.), or any other Federal, State or local law relating to the payment of wages for overtime."

Executive Orders Nos. 9240 and 9248 mentioned in the concurring opinion (p. 24) related to Premium and Holiday pay. Executive Order No. 9301, above quoted, was later and amendatory, and a cross reference to 9301 follows the print of 9240. (See United States Code, Supp. IV, 1941-1945: Title 40, Public Buildings, Property and Works, Sec. 326.)

Further, both the Labor Department and the Law Department of the United States have by briefs on file herein argued that these appellees should be held to be within the coverage of the Fair Labor Standards Act.

We submit, therefore, that the ruling of this Court that the Walsh-Healey Act and the Fair Labor Standards Act cannot apply at one and the same time is untenable.

(b) The Opinion holds (p. 11) that "plaintiffs and all other employees of defendant" were within the language of the Walsh-Healey Act, and hence covered by it. Nothing could be further from the fact. The Walsh-Healey Act vests in the Secretary of Labor the authority to administer the Act and to determine coverage under the Act (Endicott-Johnson Co. v. Perkins, 317 U. S. 501, l. e. 507, 508). The findings, rulings and interpretations of the Secretary of Labor in the administration of the Act, are not only entitled to the respect accorded administrative rulings and interpretations, but under the terms of Sec-

tion 5 of the Act (41 U. S. C. A., Sec. 39) are when supported by the evidence "conclusive in any court of the United States." Acting under the authority vested in him by the Act, the Secretary of Labor has issued rulings and interpretations for the determination of what employees are within the coverage of the Act and what are without the coverage of the Act. (See Rulings and Interpretations No. 3, issued by the U. S. Department of Labor October 1, 1945.) By Sections 36 and 37 of said Rulings and Interpretations, the Secretary of Labor enumerates the classes of employees included in the Act, and by Sections 38 and 39 enumerates the classes of employees not covered by the Act. Some of the groups listed as not covered (Rulings and Interpretations, supra, pp. 23, 24), are office employees, custodial employees, firemen, maintenance men, cleaners, certain foremen, service men, workers engaged in certain general experiments, instructors, employees engaged in preparing material orders and requirements, marine workers, and others. It is thus apparent that a large segment of the workers at the St. Louis Ordnance Plant were not within the coverage of the Walsh-Healey Act.

The Act only covers those employees who are directly engaged in production, and we contend that under the Secretary of Labor's interpretations appellees were not covered. See Administrative Regs., Art. 102, p. 55, of the above mentioned Rulings and Interpretations No. 3, where the Secretary of Labor rules that the Walsh-Healey Act "shall not be deemed applicable to office or custodial employees". Appellant did not consider appellees covered by the Walsh-Healey Act. Its own occupational analyst exempted them from the overtime provisions of the Walsh-Healey Act because of the provisions of Art. 102 of the Secretary of Labor's Regulations. (See Defendant's Ex. 14, R. p. 611.)

We submit that these appellees having been thus excluded from the Walsh-Healey Act and denied its benefits, it is somewhat bitter irony to now tell them that they were covered by it, and hence have no right of action under the Fair Labor Standards Act. We submit that the appellant was right in exempting appellees from the Walsh-Healey Act, but it was wrong in exempting them from the provisions of the Fair Labor Standards Act relating to administrative employees. It was to test that exemption that this suit was brought. We were naive enough to think that this was the issue that would be tried. Unfortunately, it has been lost sight of in the logomachy that has been stirred up over everything except the real dispute in this case.

(c) Both the Court's opinion on page 7 and the concurring opinion on page 21 state that the cost-plus-a-fixed-fee contract specifically made the provisions of the Walsh-Healey Act applicable to the wage and overtime rights of the employees. This is incorrect. The stipulations under Art. III-D of the contract (R. p. 783), under the heading "Walsh-Healey Act" are the "representations and stipulations" that the law **requires** be included in all contracts for public work to which the Walsh-Healey Act applies. (See Sec. 1 of the Act, 41 U. S. C. A., Sec. 35) where it is provided that in all such contracts "there shall be included the following representations and stipulations." Then follow the same provisions that are included in the contract, and set out on page 783 of the record herein. These representations and stipulations were included because it was recognized that there would be workers in the plant who would be included in the Walsh-Healey Act, and therefore it was necessary for the contract to contain the representations and stipulations which the law required. That was the purpose and the only purpose of the inclusion

in the contract of the representations and stipulations required by the Walsh-Healey Act. The inclusion of this matter did not in any way indicate that the Walsh-Healey Act was to apply to labor relations to the exclusion of the Fair Labor Standards Act. The contemporary interpretation of the contract at the time showed that there was no such intention because the contractor immediately proceeded to operate under both Acts, and to classify and pay its employees under whichever of these Acts applied to such employees.

We submit therefore that it can not fairly be inferred that, because the contracting parties complied with the law in including these representations and stipulations, they intended to exclude the Fair Labor Standards Act.

## II.

### **The concurring opinion inadvertently overlooks material matters of law and fact.**

Judge Johnsen's concurring opinion seems to embody in some respects the defenses made by the Contractor in its Reply Brief in the Supreme Court in *Kennedy v. Silas Mason Company*, 334 U. S. 249, to the effect that the Act of July 2, 1940, 50 U. S. C. A., War Appendix, Sec. 1171 et seq., sets up a complete system of labor relations which suspended the operation of the Fair Labor Standards Act. This contention was ably answered by the Administrator of the Wage and Hour Division in his Supplemental Brief herein under Point III, pp. 11 to 22, which we ask be considered on this petition. The Administrator's argument seems to us to establish to a certainty that there is no tenable basis for such a construction of the 1940 Act. The concurring opinion, however, goes beyond the defense made by the Contractor, as aforesaid, in the above case,

and interprets the 1940 Act as also suspending the Walsh-Healey Act, and as investing the Secretary of War with unlimited power over labor relations, including the right "to fix wage scales and overtime rates and rights for the employees in the hybrid relationship involved in these munitions plants, . . . without regard to the provisions of the Walsh-Healey Act" (Op. p. 21), and apparently without regard to any other laws relating to wages, hours or labor relations.

The concurring opinion then rules that the inclusion in the cost-plus-a-fixed-fee contract herein (Deft's. Ex. 20) Art. III-D, p. 783, "of the representations and stipulations" required by Section 1 of the Walsh-Healey Act, 41 U. S. C. A., Section 35, to be included in all public contracts, was an exercise of this supposed plenary power, and made the Walsh-Healey Act the sole arbiter of all labor relations in the St. Louis Ordnance Plant.

We think reflection will make it clear that such a ruling is absolutely untenable for many reasons: (a) The Act of July 2nd itself, in terms, makes the Contractor operated plants subject to the Walsh-Healey Act. [See Sec. 1 (a) and Sec. 5, 50 U. S. C. A., War Appendix, Secs. 1171 and 1172.] (b) The argument of the Labor Administrator above referred to points out the reasons why the 1940 Act cannot be interpreted as suspending the Fair Labor Standards Act (see Supplemental Brief of Labor Administrator, pp. 11 to 22), which argument, for brevity, we hereby adopt by reference. (c) The Secretary of War never attempted to exercise any such power, and the inclusion in the contract of the "representations and stipulations" (R. p. 783) was not an attempt to set up labor relations, but was done merely to comply with the law (41 U. S. C. A. 35). (d) If, however, it could be said to be an exercise by the Secretary of Labor of such a supposed power, it was

nullified by the President in Executive Order No. 9301, signed February 9, 1943, 8 Fed. Reg. 1825, discussed and quoted, *supra*. The concurring opinion concedes that the Secretary of War's actions under the 1940 Act are subject to control of the President. We quote from the concurring opinion, p. 20, to-wit:

“The Secretary of War's actions, under this concept of the statute, might perhaps be subject to the control of an Executive Order issued by the President, and, of course, they necessarily would be so after the war itself began in 1941.”

This Executive Order (see Appendix) in express terms provides that it shall not suspend “any provision of the Fair Labor Standards Act.” It thus seems perfectly obvious on analysis that the whole thesis of the concurring opinion is untenable.

### III.

#### Costs.

We ask that the judgment be modified with respect to costs. The opinion makes no reference to costs, and hence we are informed that the costs, including this costly record, would be adjudged against the employees. We think under all the facts and circumstances of this case that such a result would be most inequitable. This suit was brought in good faith. At that time the right of the workers to sue under the Fair Labor Standards Act had been sustained by respectable authority [Umthum v. Day & Zimmermann, Inc., 16 N. W. (2d) 258 (Sup. Ct. Ia., 1944); Timberlake v. Day & Zimmerman, Inc., 49 Fed. Supp. 28 (S. D. Ia., 1943)] and we recall no rulings to the contrary.

In ordering the dismissal of this case the Court did so on a legalistic concept advanced for the first time in this

Court, admittedly contrary to administrator interpretation (Op. p. 14), and, as we view it, contrary to Federal decisions. Certainly, on the law as it was interpreted four years ago when this suit was filed, counsel could not have advised otherwise than that the workers in the war plants engaged in the production of goods for commerce were within the coverage of the Fair Labor Standards Act. Many such cases were filed by the workers in these war plants, of which the cases cited in the briefs and in the footnotes to pages 10 and 11 of the Court's opinion are but a few. Many of these cases have resulted in recoveries including liquidated damages and attorneys' fees, some in this very Court; none were dismissed because of any assumed coverage by the Walsh-Healey Act.

We submit that the matter of costs rests in the sound discretion of the Court, and that it would be a hardship to adjudge them against appellees, particularly if they are allowed to become a joint obligation. The great majority of these employees are in all probability unable to pay their part, with the result that the whole bill may be enforced against the few who may be fortunate enough to own a little property subject to execution. This could well result in loss of their homes. We do not feel that upon reflection this Court would be inclined to permit such a harsh result. There is ample precedent for relief against such a hardship. Where, as in this case, the reversal is for want of jurisdiction in the Court below, the Supreme Court of the United States has held that Federal Courts may make such order in respect to the costs of the appeal "as justice and right shall seem to require" (Peper v. Fordyce, 30 L. Ed. 435, l. c. 436, 119 U. S. 469). Further, it has been held that when the point on which the case was decided was not urged in the Court below, no costs will be allowed. Cornelius v. C. C. Pictures, Inc., 7 Fed. (2d) 308 (2nd Cir.), l. c. 309, where the Court said:

"The ground on which we place decision not having been urged in the court below, there will be no costs in this court."

The Court's opinion herein concedes that the point on which it ruled this case was "apparently \* \* \* not presented to or considered by the trial court, but the question relates to jurisdiction, and is properly before us" (Op. p. 5). We respectfully ask, therefore, that, in any event, this judgment be modified so that costs be not allowed to either party.

Respectfully submitted,

THOMAS BOND,  
408 Olive Street,  
St. Louis, Missouri,  
Attorney for Appellees.

**Certificate of Counsel.**

I, Thomas Bond, counsel for the above named appellees, petitioners herein, do hereby certify that the above and foregoing petition for rehearing is presented and filed in good faith and not for delay, and is believed to be meritorious.

Thomas Bond,  
Attorney for Appellees.

## APPENDIX.

### 48-Hour Minimum Wartime Workweek.

#### Executive Order 9301.

(Signed by the President, February 9, 1943.)

By virtue of the authority vested in me by the Constitution and statutes, as President of the United States, and in order to meet the manpower requirements of our armed forces and our expanding war production program by a fuller utilization of our available manpower, it is hereby ordered:

1. For the duration of the war, no plant, factory, or other place of employment shall be deemed to be making the most effective utilization of its manpower if the minimum workweek therein is less than 48 hours per week.
2. All departments and agencies of the Federal Government shall require their contractors to comply with the minimum workweek prescribed in this Order and with policies, directives, and regulations prescribed hereunder, and shall promptly take such action as may be necessary for that purpose.
3. The Chairman of the War Manpower Commission shall determine all questions of interpretation and application arising under this Order and shall formulate and issue such policies, directives, and regulations as he determines to be necessary to carry out this Order and to effectuate its purposes. The Chairman of the War Manpower Commission is authorized to establish a minimum workweek greater or less than that established in Section 1 of this Order or take other action with respect to any case or type of case

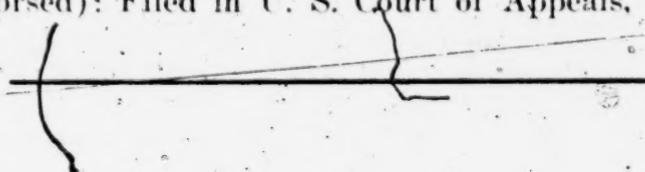
in which he determines that such different minimum workweek or other action would more effectively contribute to the war effort and promote the purposes of this Order.

4. All departments and agencies of the Federal Government shall comply with such policies, directives, and regulations as the Chairman of the War Manpower Commission shall prescribe pursuant to this Order, and shall so utilize their facilities, services, and personnel, and take such action under authority vested in them by law, as the Chairman determines to be necessary to effectuate the purposes of this Order and promote compliance with its provisions.

5. Nothing in this Order shall be construed as superseding or in conflict with any Federal, State or local law limiting hours of work or with the provisions of any individual or collective bargaining agreement with respect to rates of pay for hours worked in excess of the agreed or customary workweek, nor shall this Order be construed as suspending or modifying any provisions of the Fair Labor Standards Act (Act of June 25, 1938; 52 Stat. 1060; 29 U. S. C. 201, et seq.) or any other Federal, State or local law relating to the payment of wages or overtime.

(Endorsed): Filed in U. S. Court of Appeals, Apr. 25, 1949.

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

No. 13663

THE UNITED STATES CARTRIDGE COMPANY, APPELLANT  
*v.*

R. M. POWELL, ET AL., APPELLEES

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*Appeal from the District Court of the United States  
for the Eastern District of Missouri, Eastern Division*

---

**Brief for the Administrator of the Wage and Hour  
and Public Contracts Division, United States De-  
partment of Labor as Amicus Curiae in Support  
of Petition for Rehearing**

The Administrator strongly urges the Court to grant the petition for rehearing because of the far-reaching implications of the decision and because the opinion of the Court indicates that the full significance of the issue on which the Court's decision turned may not have been adequately brought to the Court's attention. In addition, it appears that the Court overlooked the fact that at least some of the employees involved in this suit may be outside the scope of the Walsh-Healey Act (see Appellees' petition, p. 8), so that the decision excluding them from the Fair Labor Standards Act has the effect of ex-

cluding them entirely from all Federal labor standards legislation.

Although a written brief, as *amicus curiae*, was filed on behalf of the Administrator, prior to the Court's decision, that brief covered a variety of issues and only a comparatively minor portion dealt with the issue of the application of the Walsh-Healey Act. Also no counsel appeared on behalf of the Administrator at the oral argument. Under these circumstances, the argument on this issue may not have been presented with the completeness and clarity commensurate with the importance of the question.

The ruling that the Fair Labor Standards Act and the Walsh-Healey Act "both may not apply at one and the same time" and that the Fair Labor Standards Act is necessarily inapplicable to an employer when engaged only in the manufacture of munitions of war under a cost-plus contract with the Government, is directly contrary to the consistent construction of these statutes throughout the more than ten years of their existence, not only as interpreted by the Administrator, but as construed by Congress and the courts, and indeed by all other Government agencies concerned. As pointed out in the Government's brief filed in the Supreme Court in *Kennedy v. Silas Mason Co.*, 334 U. S. 249, "The Department of Justice and the Wage and Hour Administrator have consistently regarded these cost-plus contractors as subject to the Fair Labor Standards Act. \* \* \* And it is to be noted that in 1942 the Secretary of War was

apparently of the same opinion" (Br., p. 13). The brief further pointed out that "The vast majority of the employees of such contractors were paid in accordance with the statutory standards. This was done pursuant to instructions from the Government contracting agency, *in accordance with the mutual understanding of the various Government departments concerned that the Fair Labor Standards Act was applicable to employees of such cost-plus contractors.* See opinion of the Comptroller General dated September 28, 1942, 22 Comp. Gen. Decisions 277 (n. 3, pp. 13-15, *supra*), quoting a letter from the War Department indicating its belief at that time that the Fair Labor Standards Act was applicable. The employees involved in this and similar suits are in the main employees who were thought to be within some exempting provisions of the Act or as to whom there has been some dispute regarding hours of work. \* \* \* Except for employees as to whom there was some such particular defense, the employees of cost-plus contractors were considered subject to the Act and were compensated accordingly throughout the years of the operation of these contracts" (Government's brief in *Silas Mason*, p. 26, n. 11). [Italics added.] The brief further observes that "While the coverage of the Fair Labor Standards Act and the Walsh-Healey Act may overlap, there is nothing inconsistent in the application of both statutes, where both are applicable by their terms" (*id.* at p. 5, n. 1). This Court's decision is thus contrary to the long-established construction that has consistently been followed by the administrative agencies charged with the administration and en-

forement of these regulatory statutes and approved and adopted by the Department of Justice.

The decision has far more serious and far-reaching implications, with respect to both the past and future administration of these two statutes, than this Court, judging from the statements in the opinion, could have realized. The assumption in the opinion that the two acts could not apply at one and the same time without "attending confusion in computing wages and the collection of claims therefor" (Op., p. 14) is simply not borne out by the more than ten years' experience in the practical administration and enforcement of these acts. On the contrary, the decision that the acts are mutually exclusive will create untold confusion and problems in the future administration of the Acts, since all of the administrative and enforcement machinery, and all of the numerous regulations and interpretations issued by the Administrator and the Secretary of Labor under these Acts, as well as all of the recommendations made to Congress concerning them, and all of the appropriations made by Congress for their enforcement, had been done on the assumption that the statutes were not mutually exclusive. This Court's decision may require substantial changes in the administrative machinery and a comprehensive review and modification of a large number of regulations and interpretations. The decision would also produce the anomalous result, as explained more fully *infra*, that many employees, who would clearly be entitled to the benefits of Federal labor standards if they were working under private contracts, will be excluded.

*from the labor standards of both statutes by reason of the fact that their employer is producing goods under Government contract.*

The fact that the two Acts would overlap in certain circumstances has been appreciated by the administrative agencies from the beginning, and the administrative machinery for enforcement was originally set up and has operated continuously on this assumption: Indeed, prior to the enactment of the Fair Labor Standards Act, the Secretary of Labor drew the attention of Congress to the fact that the bill (Fair Labor Standards) "overlaps to some extent administrative functions performed with respect to Government contracts under the Walsh-Healey Act" (81 Cong. Rec. Appendix 1484, 75th Cong., 1st. sess., June 15, 1937). The Secretary recommended that the Walsh-Healey Act nevertheless "should be continued in full force and effect" for the reason, but obviously only for the reason, of taking advantage of the Walsh-Healey Act to the extent that its coverage was broader in scope (e. g., it might be applied to "certain distributive concerns engaged in intrastate business"), and to the extent that its labor standards might in some cases be higher (*ibid.*). There was clearly no intent and no suggestion was ever made that the retention of the Walsh-Healey Act would operate to exclude employees working under Government contract from the broader coverage and the more effective remedies provided in the Fair Labor Standards Act. On the contrary, an affirmative measure was incorporated in Section 18 of the Act to insure against any such result. The provision in Section 18 that

nothing in the Act "shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act," when considered together with the fact that Congress was very explicit with respect to other possibly overlapping Federal regulations when it wished to exclude employees from the Fair Labor Standards Act because they were regulated by other statutes [see Section 13 (a) (4) exempting employees subject to regulation under the Railway Labor Act and Section 7 (b) (1) and (2) exempting employees subject to regulation by the Interstate Commerce Commission], seems conclusive evidence that there was no intent to exempt employees because they might be subject to the Walsh-Healey Act.

If there were any reasonable doubt as to the legislative intent in the original enactment of the Fair Labor Standards Act, such doubt, it is submitted, has been completely dispelled by the repeated subsequent actions by Congress recognizing the applicability of both Acts, specifically with respect to Government cost-plus contracts. Thus, in 1942 the operations of Wage and Hour Division and of the Public Contracts Division, which had previously been conducted by separate administrative machinery, were consolidated for the reason, as reported to Congress, that the war had increased the amount of industry subject to the Walsh-Healey Act and that "most of these new establishments were also subject to the provisions of the Wage and Hour Law" so that consolidation would result in "great saving in time."

and effort." See Administrator's Annual Report to Congress for the fiscal year ending June 30, 1942, p. 91. See also Annual Report for 1948, pointing out that the consolidation had been effected "since most employers subject to the Public Contracts Act, which applies to manufacture or supply contracts let by the government for equipment or supplies in amounts of \$10,000, are subject to the Fair Labor Standards Act as well" (p. 9).<sup>1</sup>

Each annual report since 1942 has expressly brought to the attention of the Congress the Administrator's view that most employers subject to the Public Contracts are also subject to the Fair Labor Standards Act as well and detailed schedules of the Administrator's inspection activities showing the enforcement of that view.<sup>2</sup>

The reports also show that in a number of cases administrative proceedings under the Walsh-Healey Act have been accompanied by criminal prosecutions under Section 16-(a) of the Fair Labor Standards Act.<sup>3</sup> The records of the United States District Courts show at least 20 criminal cases in which defendants had been convicted and fined for violations under the Fair Labor Standards Act where those same defendants

<sup>1</sup> Annual Reports to Congress are made pursuant to Section 4 (d) of the Act.

<sup>2</sup> 1943 Annual Report, p. 9; 1944 Annual Report, p. 10; 1945 Annual Report, p. 2; 1946 Annual Report, p. 14; 1948 Annual Report, p. 5.

<sup>3</sup> 1943 Annual Report, p. 2; 1944 Annual Report, p. 37; 1945 Annual Report, p. 17; 1946 Annual Report, pp. 18, 20; 1947 Annual Report, p. 69; 1948 Annual Report, p. 176.

<sup>4</sup> See Administrator's Annual Report for 1948, p. 9.

were found liable in administrative proceedings under the Walsh-Healey Act.<sup>5</sup> The Annual Reports also show that over 40,000 establishments have been found by the Administrator to be within the coverage of both Acts.<sup>6</sup>

Thus, repeatedly each year it has been brought to the attention of Congress that both Acts were being applied to Government contracts. On the basis of these reports Congress each year has voted appropriations for such enforcement without the slightest hint of criticism that the money was being expended in enforcement activities not contemplated in the basic statutes. In analogous situations such action has been held to constitute Congressional confirmation and ratification of an administrative interpretation of such long-standing and consistent application. Thus, in *Brooks v. Dewar*, 313 U.S. 354, 361, it was held that after information as to a questioned system of temporary licenses had come to the attention of Congress through annual reports of the Secretary of the Interior "The repeated appropriations of the proceeds of the fees thus covered and to be covered, into the Treasury, not only confirms the department construction of the statute but constitutes a ratification of the action of the Secretary as the agent of Congress in

<sup>5</sup> These prosecutions were not predicated on any theory of a segregated portion of defendant's business being devoted to production for others than the United States, such as is suggested on page 12 of this Court's opinion.

<sup>6</sup> Tabular presentation has been made in the annual report for each year since 1942, but the report of 1948 summarizes the whole activity between 1942 and 1948 at page 31.

the administration of the Act." This principle has had wide application. Similarly, in *Fleming v. Mohawk Co.*, 331 U. S. 111, 116, the Supreme Court stated not only that such "contemporaneous and consistent" administrative construction was "entitled to great weight" but that "the appropriation by Congress of funds for the use of such agencies stands as confirmation and ratification of the action." See also *Wells v. Nickles*, 104 U. S. 444, 497, and *Isbrandtsen-Moller Co. v. United States*, 300 U. S. 139, 147.

In addition to all of the above evidence of Congressional awareness and approval of the applicability of the Fair Labor Standards Act to employees subject also to the Walsh-Healey Act, further conclusive evidence that Congress recognized the Act to be thus applicable is found in the enactment of the Portal-to-Portal Act of 1947 (Public Law 49, 80th Cong., Chapter 52—1st Sess.). As pointed out in the Government's brief in the *Silas Mason* case (pp. 35-36), one of the stated purposes of the Portal Act was to invalidate portal-to-portal claims by employees under the Fair Labor Standards Act because of the "increased cost of war contracts" by virtue of such liabilities to cost-plus contracts from such claims. "Thus Congress both during and after the war seems never to have doubted that the Act covers employees of cost-plus contractors with the Government who were engaged in the production of munitions of war" (see *Silas Mason* brief, p. 36).

As indicated above, the administrative and enforcement machinery has been set up on this assumption

and all of the interpretations and regulations under the two Acts emanating from the Administrator or the Secretary of Labor have been issued on the basis of such construction. Thus, although the full impact of this Court's decision cannot be estimated or predicted as yet, it is unavoidable that such a sudden, unexpected change of construction will result in immeasurable confusion and disruption in the administration and enforcement of these Acts.

The confusion and disruption will be aggravated by the abridgement of remedies and penalties resulting from this Court's decision. The Walsh-Healey Act contains no criminal sanction such as that provided in Section 16 (a) of the Fair Labor Standards Act, nor the employee suit remedy as provided in Section 16 (b) of the Fair Labor Standards Act. While, as noted in this Court's opinion, the Walsh-Healey Act provides other sanctions and in some respects the Walsh-Healey labor standards may be more favorable to labor than the minimum standards of the Fair Labor Standards Act, the Walsh-Healey sanctions are by no means substitutes for the two above remedies of the Fair Labor Standards Act, either from the point of view of the Administrator or from the point of view of the employee. As the Supreme Court has pointed out, one of the important features of the Section 16 (b) remedy is that it has the "virtue of minimizing the cost of enforcement by the Government. It is both a common-sense and economical method of regulation" which "puts directly into the hands of the employees who are affected by violation

the means and ability to assert and enforce their own rights, thus avoiding the assumption by Government of the sole responsibility to enforce the act." *Brooklyn Savings Bank v. O'Neil*, 324 U. S. 697 at 706, n. 16. "And," as the Supreme Court has further pointed out, "not the least effective aspect of this remedy is the possibility that an employer who gambles on evading the Act will be liable for payment not only of the basic minimum originally due but also damages equal to the sum left unpaid." 324 U. S. at 709. The extent to which the unavailability of this remedy, and of the criminal sanction, will impair enforcement of the Walsh-Healey Act is incalculable. Although no precise estimate can be made of the savings in cost attributable to the general belief that the sanctions in the Fair Labor Standards Act are applicable, a comparison of the proportion of administrative proceedings required for enforcement of the Walsh-Healey Act during the one year prior to the enactment of the Fair Labor Standards Act with the proportion of such proceedings required in subsequent years indicates that the deterrent effect of the additional remedies provided in the Fair Labor Standards Act has been very tangible and substantial.

That the sanctions of the Walsh-Healey Act are no substitute for the remedies of the Fair Labor Standards Act from the employees' point of view seems adequately illustrated by the result in the instant case. Apart from the fact that the employee under the Walsh-Healey Act cannot receive double damages, he must await the convenience and dis-

cretion of the Administrator in order to recover unpaid wages and is wholly dependent on the Administrator's decision to take action, and the availability of adequate funds and administrative machinery in order to recover anything at all. Even in the event that there is adequate administrative machinery for prompt action by the Administrator, this case illustrates that the employee may be confronted with further obstacles and problems apparently overlooked by this Court's opinion. As appellees' petition for rehearing points out (p. 8), the Walsh-Healey Act has never been interpreted or administered to extend its benefits to employees engaged only in processes and occupations "necessary to" the manufacture or production, as distinguished from employees engaged directly in the productive processes. On the other hand, the Fair Labor Standards Act, by its terms and as construed by the Supreme Court, applies broadly to employees "employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State" (Section 3 (j)). Though the duties of the appellees in the instant case were found to be necessary to and interwoven with the production carried on by appellant (R. 917), there is no basis in the record for concluding that their employment in the safety department in such occupations as Assistant Chief Safety Engineer and Assistant Staff Supervisors (R. 917) involved actual engagement "in the manufacture of materials, sup-

plies, articles, and equipment used in the performance of the contract." While the testimony in the record may also be inadequate to establish the contrary view (since this issue was not tried in the court below and only a few of the appellees testified), the parties are in agreement that appellees were not so engaged (Defendant's Ex. 14, R. 611, as to appellant; p. 9 of Petition for Rehearing as to appellees).

Thus, this Court's decision has the anomalous result of excluding altogether from the Federal labor standards employees who would clearly be within the scope of the Fair Labor Standards Act if they were not engaged in work on Government contracts. Under these circumstances the Court is presented with almost precisely the problem posed and left unanswered in its opinion, that is, "the question whether the Walsh-Healey Act should apply to the employees engaged in the production of the munitions under contract with the United States and the Fair Labor Standards Act should apply to other employees." We believe we have shown in the foregoing discussion that serious confusion and disruption in the administration and enforcement of these Acts will result from this Court's decision even if it is assumed that all of the Government's contractors' employees are subject to the Walsh-Healey Act. The confusion and problems will obviously be aggravated and multiplied if simultaneously some employees are subject to the Walsh-Healey Act and others to the Fair Labor Standards Act.

**CONCLUSION**

It is submitted that rehearing should be ordered so that the Administrator may have opportunity for full oral and written presentation of his views.

Respectfully submitted,

WILLIAM S. TYSON,

*Solicitor,*

BESSIE MARGOLIN,

*Assistant Solicitor,*

WILLIAM A. LOWE,

*Attorney,*

*United States Department of Labor,*

*Washington, D. C.*

REID WILLIAMS,

*Regional Attorney.*

MAY 1949

Endorsed: Filed in U. S. Court of Appeals, May 5,  
1949.

[fol. 1041] (Order Denying Petition of Appellees for Rehearing and Modifying Opinion, etc.)

May Term, 1949.

Saturday, May 7, 1949.

The Court has considered the petition of appellees for a rehearing and to modify the judgment of this Court in this cause; also the motion of appellant to modify the opinion and suggestions<sup>s</sup> of appellees in opposition, and it is now here Ordered that the petition for rehearing be, and is hereby, denied, and that the official opinion filed April 12, 1949, be, and is hereby, modified by striking therefrom on page 5, the last sentence in the first paragraph, reading as follows:

"Apparently the possible applicability of the Walsh-Healey Act or of the Act of July 2, 1940, or the bearing of either of those Acts upon the applicability of the Fair Labor Standards Act was not presented to or considered by the trial court, but the question relates to jurisdiction and is properly before us."

And it is further Ordered by this Court that the judgment of this Court entered herein April 12, 1949, providing that appellant recover from appellees the costs in this Court, be, and is by the Court hereby vacated, set aside and held for naught, and that a new judgment be entered this day providing that the reversal of the judgment of the District Court be without taxation of costs in this Court in favor of either of the parties, appellant or appellees, and for a remand with directions for proceedings consistent with the opinions of this Court.

May 7, 1949.

[fol. 1042]

(Judgment.)

United States Court of Appeals  
for the Eighth Circuit.

May Term, 1949:

Saturday, May 7, 1949.

The United States Cartridge Company, if corporation,  
Appellant,No. 13~~663~~ vs.

R. M. Powell, A. C. Kropp, F. N. Harris, J. M. Tyler, J. C. Marshall, A. W. McCluing, G. H. Bentine, Joe Reeves, Herbert Hahn, N. W. Myers, B. J. Ludwig, E. L. Stockho, William Niedringhaus, William Stutz, S. P. Coley, L. W. Trimble, R. M. Stewart, B. H. Hargate, J. S. Schneider, Walter Gorg, Jr., B. M. Casey, A. H. Erickson, Elmer Maher, Emmett Hoskins, F. P. Knight, R. A. Westra, D. F. Bateman, Al Herman, George Burmeister, G. B. Darby, R. E. Jenniches, J. J. Schwartz, A. C. Kemp, Byron Yancey, J. D. Cavanaugh, W. E. O'Meara, Roland Carbone, W. A. Broad, C. L. Valoi, Mike Malloy, Russell Barnett, William Hirschberger, Frank Connell, Floy L. Jennings, Sterling Cook, Cliff Champion, Don Burke, W. C. Viehmänn, F. M. Kercheyal, Guy Crnce, R. Baxter, N. C. Walther, George Gillen, James Vollbracht, R. J. Peterson, Jack DeLargy, C. C. Brace, S. F. Peters, A. Lockhart.

Appeal from the United States District Court for the  
Eastern District of Missouri.

This Cause came on to be heard on the record from the United States District Court for the Eastern District of Missouri, and was argued by counsel.

[fol. 1043] On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the judgment of the said District Court in this cause be, and the same is here-

by, reversed without taxation of costs in this Court in favor of either of the parties, appellant or appellees.

And it is further Ordered by this Court that this cause be, and the same is hereby, remanded to the said District Court with directions for proceedings consistent with the opinions of this Court.

May 7, 1949.

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[fol. 1044] (Application of Appellees for Order Staying Issuance of Mandate.)

Now come the above named appellees by their attorney and respectfully state that heretofore, on, to-wit, the 12th day of April, 1949, this Court entered its opinion and judgment herein reversing the judgment of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, and directing that this case be dismissed; that thereafter and within the time allowed by the rules of this Court appellees duly filed their petition for a rehearing herein; that said petition was received and considered by the Court and was on the 7th day of May, 1949 denied by this Court, the opinion modified, and a new judgment of reversal without costs entered.

Appellees further state that they intend to apply to the Supreme Court of the United States for a Writ of Certiorari to review the decision and judgment of this Court in the above entitled case, and appellees desire that the issuance of this Court's mandate be stayed for such reasonable time as may be necessary to enable appellees to apply for and obtain said Writ of Certiorari.

Appellees further state that their counsel is now engaged in the preparation of their petition for Writ of Certiorari and a brief in support thereof and the requisite number of copies of the record to accompany the same; that the record is a lengthy one and contains much technical matter, and the preparation of said petition and brief will require at least thirty (30) days.

Appellees further state that the time allowed by law for filing said petition for a Writ of Certiorari in the Supreme

[fol. 1045] Court of the United States is ninety days from and after the date on which appellees' petition for a re-hearing was denied.

Wherefore, the premises considered, appellees pray that it be ordered and directed by this Court that the issuance of the mandate in the above entitled cause be stayed for a period of thirty days from and after the date of said order staying said mandate, and that same be further stayed thereafter until appellees' petition for a writ of Certiorari may be acted upon and finally disposed of by said Supreme Court of the United States; and appellees pray for such other and further orders in the premises as to the Court may seem reasonable and just.

Dated at St. Louis, Missouri, this 16th day of May, 1949.

THOMAS BOND,  
Attorney for Appellees.

I hereby certify that service of the foregoing application of appellees for order staying issuance of mandate was made upon appellant by mailing a copy thereof to Bryan, Cave, McPheeers, & McRoberts, 1630 Boatmen's Bank Building, St. Louis 2, Missouri, for the attention of Mr. R. H. McRoberts, this 16th day of May, 1949.

THOMAS BOND,  
Attorney for Appellees.

(Endorsed): Filed in U. S. Court of Appeals, May 16, 1949.

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[fol. 1046] (Order Staying Issuance of Mandate.)

May Term, 1949.

Tuesday, May 17, 1949.

On Consideration of the motion of appellees for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a

period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

May 17, 1949.

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[fol. 1047] (Praecipe for Record for Supreme Court, U. S.)

In preparing the record for use on Petition to the Supreme Court of the United States for writ of certiorari, please include the following matters therein, viz:

Printed Record on which appeal was heard in United States Court of Appeals for the Eighth Circuit;

Appearances of Counsel;

Order Denying Motion for Substitution of Parties Appellee;

Order Granting William R. McComb, Administrator of the Wage and Hour Division, U. S. Department of Labor, leave to file brief *amicus curiae*;

Order vacating Submission, Setting Cause for Reargument and as to filing further briefs;

Submission of Cause to Court on November 8, 1948;

Opinion filed April 12, 1949;

Petition of Appellees for Rehearing;

Brief of Administrator of Wage and Hour Division, U. S. Department of Labor, as *Amicus Curiae* in Support of Petition for Rehearing;

Order denying Petition of Appellees for Rehearing and Modifying Opinion, etc.;

Judgment of May 7, 1949;

Application of Appellees for Stay of Mandate;

## Order on Application for Stay of Mandate:

This Praecept.

Dated this 12th day of May, 1949.

THOMAS BOND,  
Counsel for Appellees.

(Endorsed): Filed in U. S. Court of Appeals, May 12, 1949.

[fol. 1048]

(Clerk's Certificate.)

United States Court of Appeals

Eighth Circuit

I, E. E. Koch, Clerk of the United States Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing transcript composed of two volumes, Volume I consisting of pages a to 435, inclusive, and Volume II consisting of pages 437 to 1048, inclusive, contains the printed record on which the appeal from the District Court of the United States for the Eastern District of Missouri was heard in said Court of Appeals, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, prepared in accordance with praecipe of counsel for appellees, in a certain cause in said Court of Appeals wherein The United States Cartridge Company, a Corporation, was Appellant and R. M. Powell, et al., were Appelles, No. 13,663.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 17th day of May, A. D. 1949.

(Seal)

E. E. KOCH,  
Clerk of the United States Court  
of Appeals for the Eighth Circuit.

[fol. 1043] IN THE UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT

No. 13,663, Civil

THE UNITED STATES CARTRIDGE COMPANY, a Corporation,  
Appellant,

vs.

R. M. POWELL, et al., Appellees

PRAECLPICE AND DESIGNATION OF ADDITIONAL PARTS OF THE RECORD FOR CONSIDERATION OF THE SUPREME COURT OF THE UNITED STATES UPON PETITION FOR CERTIORARI

To the Clerk of the United States Circuit Court of Appeals,  
Eighth Circuit:

It is respectfully requested that you prepare, certify and transmit to the Supreme Court of the United States the following proceedings and matters before your Court for inclusion in the printed record and for the use of said Court in its consideration of the petition for certiorari filed herein:

1. Appellant's Motion to Modify Opinion, together with Exhibits A, B and C thereto attached and made a part thereof, and all filed on April 27, 1949, the same being a motion which was sustained by the Court, in that it resulted in the modification of the original opinion as prayed in said motion and as shown by the order on said motion, page 1037 of the printed record of said proceedings.

2. This Praeclpice and Designation.

Rhodes E. Cave, Robert H. McRoberts, Marion S. Francis, 1630 Boatmen's Bank Building, St. Louis, Missouri, Attorneys for Appellant, The United States Cartridge Company.

Bryan, Cave, McPheeters & McRoberts, Of Counsel.

[fol. 1044] I hereby certify that service of the foregoing Praeclpice and Designation was made upon L. Metcalfe Walling, amicus curiae, by mailing a copy thereof to his attorney, Ried Williams, Regional Attorney, Department of Labor, at his last know address, 3000 Fidelity Building, Kansas City 6, Missouri, on the 10th day of June, 1949; and

service was made upon appellees by mailing a copy thereof to their attorney, Thomas Bond, at his last known address, 408 Olive Street, St. Louis, Missouri, on the same day.

Marion S. Francis, Attorney for Appellant, The United States Cartridge Company.

(Endorsed) : Filed in U. S. Court of Appeals, Jun. 10, 1949:

[fol. 1045] IN THE UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT, IN BANC

No. 13,663, Civil

THE UNITED STATES CARTRIDGE COMPANY, a Corporation,  
Appellant,

vs.

R. M. POWELL, et al., Appellees

Appeal from the District Court of the United States for the Eastern District of Missouri

APPELLANT'S MOTION TO MODIFY OPINION

Comes now The United States Cartridge Company, a corporation, appellant in the above entitled cause, by its attorneys, and respectfully moves the Court to modify the opinion of the Court heretofore filed and entered herein by striking out the statement on page 5 thereof reading as follows:

Apparently the possible applicability of the Walsh-Healey Act \* \* \* or the bearing of either of those Acts upon the applicability of the Fair Labor Standards Act was not presented to or considered by the trial court, \* \* \*

And for grounds for its said motion appellant says:

1. The possible applicability of the Walsh-Healey Act, and the bearing of that Act upon the applicability of the Fair Labor Standards Act was presented to the trial court.

(a) In the Brief on Behalf of Defendant The United States Cartridge Company filed with the trial court on September 24, 1946, as indicated by the excerpt from pages 6

to 9 thereof, and from Appendix "A" thereto, filed herewith as Exhibit A hereto;

[fol. 1046] (b) in the Reply Brief for Plaintiffs filed with the trial court on October 12, 1946, as indicated by the excerpt from page 19 thereof, filed herewith as Exhibit B hereto; and

(c) in the Memorandum on Oral Argument and Reply for the Administrator of the Wage and Hour Division, United States Department of Labor, as Amicus Curiae filed with the trial court on October 31, 1946, as indicated by the excerpt from pages 5 to 8 thereof, filed herewith as Exhibit C hereto.

2. In their petition for a Rehearing and to Modify the Judgment appellees request that the judgment of this Court be modified with respect to costs, basing such request, in part, upon the above quoted portion of the Court's opinion, and make the further statement (page 12): "In ordering the dismissal of this case the Court did so on a legalistic concept *advanced for the first time in this Court,*" (Emphasis ours).

3. This statement in the Court's opinion may be misleading to the Supreme Court in the event a Petition for a Writ of Certiorari shall be filed and granted.

Respectfully submitted,

Rhôdes E. Cave, R. H. McRoberts, Marion S. Francis,  
1630 Boatmen's Bank Building, St. Louis 2, Missouri,  
Attorneys for Appellant, The United States  
Cartridge Company.

Bryan, Cave, McPheeters & McRoberts, 1630 Boatmen's  
Bank Building, St. Louis 2, Missouri, Of Counsel.

April 27, 1949.

[fol. 1047]

## EXHIBIT A

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF  
MISSOURI

No. 3597

Court No. 1. Civil Action

R. M. POWELL, et al., Plaintiffs,

vs.

THE UNITED STATES CARTRIDGE COMPANY, a Corporation,  
Defendant

Brief on Behalf of Defendant, the United States Cartridge  
Company

"(3) *The Walsh-Healey Act.*

The Fair Labor Standards Act was passed in 1938. At that time, the Walsh-Healey Act, 41 U. S. C. 25-45, was in effect, having been enacted in 1936. The Walsh-Healey Act applies to contracts of the Government for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$10,000.00, and was unquestionably applicable to the employees of contractors such as The United States Cartridge Company. Under the Walsh-Healey Act employees working for independent contractors on Government contracts, were entitled to a forty-hour week, with time and one-half for overtime. They had the right to collect such unpaid wages at Government expense, although the Walsh-Healey Act did not give an employee as liquidated damages an amount of unearned overtime equal to the amount of earned overtime withheld. Thus, *at the time the Fair Labor Standards Act was passed, there was in full force and effect a law giving to employees of Government contractors all of the benefits which the plaintiffs now claim under the Fair Labor Standards Act, except the right to receive in addition to the alleged unpaid overtime compensation 'an equal amount as liquidated damages'.* Can it be truly said that the failure to provide for such additional 'windfall' was one of the evils which [fol. 1048] Congress sought to cure by the enactment of the

Fair Labor Standards Act? Is it reasonable to assume that Congress intended by the Fair Labor Standards Act to provide that employees on Government contracts should receive, at *Government expense*, not merely time and one-half overtime, but an additional equal amount 'as liquidated damages'; that Congress was intending to penalize the Government in the event that employees working on cost-plus Government contracts should not be paid the overtime provided for under the Walsh-Healey Act? On the contrary, the fact that the Walsh-Healey Act was in effect at the time the Fair Labor Standards Act was passed, that the Walsh-Healey Act made adequate provision with respect to overtime compensation of employees working on Government contracts, that there was no evil in this respect needing further legislation for its correction, must be taken into consideration in determining the intention of Congress with respect to the scope of the Fair Labor Standards Act. We submit that since Congress had by the Walsh-Healey Act already made provision for workmen employed by contractors dealing with the Government, it was the purpose of Congress in enacting the Fair Labor Standards Act to extend the benefits already enjoyed by workers on Government contracts over the larger field of workers in private industry whose employers were not engaged as Government contractors. This Congress expressly sought to do pursuant to the power delegated to it under the Commerce Clause of the Constitution, and inserted the double damage provision as an aid to enforcement, and, as will be pointed out later, as a species of compulsion against private industry. Surely Congress did not need to provide further penalties against the Government over and beyond those contained in the Walsh-Healey Act. While Congress may have had, in the field of private industry, unregulated by the provisions of the Walsh-Healey Act, a reason for providing for liquidated damages without reference in any respect to actual damages, as a means of compulsion to [fol. 1049] secure observance of the law, there was no need of any such liquidated damages in the field of Government contracts, particularly cost-plus contracts, where every action of the employer is controlled by the Government, checked and supervised by Government auditors and inspectors, and where the Government pays the bill. Clearly no such thought could have been in the mind of Congress when it sought, in the exercise of its delegated power to

regulate commerce among the several states, to require private industry to meet the standards already applicable to Government contractors, and to provide, in addition, a practical inducement to compliance. Nor did Congress intend, by the enactment of the Fair Labor Standards Act, to supersede the Walsh-Healey Act in the field of Government contracts; and the Government recognized the fact that the Walsh-Healey Act had not been superseded by specifically including its provisions in Contract No. W-ORD-491.

We submit then that the Act must be read in the light of Congress' finding as to the evil which it sought to remedy, the policy which it sought to enforce, the power which it sought to exercise, the means of accomplishment of the desired end, and the existence on the statute books of the Walsh-Healey Act, already covering with respect to employees on Government contracts the same field covered by the Fair Labor Standards Act. So read, it will appear that Congress did not intend to have any general language used in the Act applied against the Government itself."

To said Brief on Behalf of Defendant The United States Cartridge Company there was attached an appendix reading, in part, as follows:

#### **"APPENDIX 'A'**

**Material Portions of Contract No. W-ORD-491**

**"Contract No. W-ORD-491**

**"Cost-Plus-a-Fixed-Fee Operation Contract.**

**"War Department"**

[fol. 1050]

**"Article III-D—Walsh-Healey Act.**

**"1. The following representations and stipulations pursuant to the Walsh-Healey Public Contracts Act (Act of**

June 30, 1936; 49 Stat. 2036; 41 USC 35-45), shall apply  
to the performance of this contract:

(Here follow the specific representations and stipulations required by the Walsh-Healey Act.)"

[fol. 1051]

**EXHIBIT B**

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI**

Court Room No. 1

Civil Action No. 3597

R. M. POWELL, et al., Plaintiffs,

vs.

**THE UNITED STATES CARTRIDGE COMPANY, a Corporation,**  
**Defendant**

**REPLY BRIEF FOR PLAINTIFFS**

"We may add at this point that defendant's counsel are in error in their contention that these plaintiffs could obtain relief under the Walsh-Healey Act. This act applies only to strictly production workers (41 U.S.C.A. Secs. 35-45, *Perkins, etc. v. Endicott-Johnson Corp.*, 40 Fed. Sup. 254, l. c. 256, paragraphs 2 and 3)."

[fol. 1052]

## EXHIBIT C

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

Civil No. 3597

R. M. POWELL, et al., Plaintiffs,

v.

THE UNITED STATES CARTRIDGE COMPANY, a Corporation,  
Defendant

MEMORANDUM ON ORAL ARGUMENT AND REPLY FOR THE ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, AS AMICUS CURIAE

"The defendant, in its argument, has injected another issue into this case which we believe requires some refutation. Defendant states (pages 6 to 9) that its employees were covered by the Walsh-Healey Act and that 'this Act' gives the 'employees' of Government contractors all of the benefits which the plaintiffs now claim under the Fair Labor Standards Act 'except the right to receive, in addition to the alleged unpaid overtime compensation, "an equal amount as liquidated damages.'" This general argument of the defendant is not an accurate statement of the coverage of the Walsh-Healey Act. Actually the Walsh-Healey Act and the administration thereof by the Secretary of Labor, in substance, is limited to employees who are closely related to the operations 'preparatory or necessary to, or in the performance of the Government contract.' Supervisory, custodial, maintenance, and many other employees were not deemed to be covered by the Walsh-Healey Act. For the information of the Court and counsel, we are attaching herewith Rulings and Interpretations No. 2 of the [fol. 1053] United States Department of Labor relating to the Walsh-Healey Public Contracts Act, and we call particular attention to 'Section III—Employees,' page 19, wherein the employees covered and not covered by the Act are described. These rulings and interpretations were in effect until superseded on October 1, 1945, by Rulings and

Interpretations No. 3, a copy of which is also furnished herewith to Court and counsel for their information.

Coverage of employees under the Fair Labor Standards Act is much broader and more comprehensive than employees covered under the Walsh-Healey Act. The term 'produced' as defined under Section 3 (j) of the Act, has been given a broad application (*Fleming v. Kirschbaum Co.*, 124 Fed. (2d) 567, at 571; affirmed 316 U. S. 517), and has been applied to cover employees engaged in all steps, whether manufacture or not, which lead to readiness for putting goods into the stream of commerce.' (*Western Union Telegraph Co. v. Lenroot*, 323 U. S. 490, 503). Thus, the Act has been applied to elevator operators, watchmen (*Kirschbaum v. Walling*, *supra*), to auxiliary fire guards (*Armour & Co. v. Wantock*, 323 U. S. 126), window washers, and similar maintenance men (*Martino v. Michigan Window Cleaning Co.*, 66 Sup. Ct. 379), and numerous other employees whose work was necessary to the production of goods for commerce, such as clerical employees, truck drivers, cooks, etc. See *Walling v. Jacksonville Paper Co.*, 128 F. (2d) 395 (C.C.A. 5); *Walling v. Mutual Wholesale Food & Supply Co.*, 141 F. (2d) 331 (C.C.A. 8) *Consolidated Timber Co. v. Womack*, 132 F. (2d) 101 (C.C.A. 9); *Hanson v. Lagerstrom*, 133 F. (2d) 120 (C.C.A. 8); *Walling v. C. E. Amidon*, 153 F. (2d) 159 (C.C.A. 10); and *Culver v. Bell & Loffland, Inc.*, 146 F. (2d) 29 (C.C.A. 9).

It was also understood by the War Department and the cost-plus contractors, such as defendant, that there were employees in these ordnance plants who likely were not under the Walsh-Healey Act but were within the coverage [fol. 1054] of the Fair Labor Standards Act. For example, see *Eustice v. Federal Cartridge Corp.*, 6 Wage Hour Cases 221 (U.S.D.C. Minn.), decided June 13, 1946. The question there was whether or not certain firemen working under the so-called two-platoon system in the Twin Cities Ordnance Plant, operated by the defendant, Federal Cartridge Corporation as a cost-plus-a-fixed-fee contractor with the United States Government, for the manufacture of ordnance for the United States Army, had been paid overtime in accordance with the Fair Labor Standards Act. The two-platoon contract had been entered into with the defendant's employees on January 11, 1944, and there appears in the Court's decision, reference to the correspondence of date

February 11, 1944, between Deputy Administrator Wm. R. McComb, replying to Lt.-Col. Wm. J. Brennan, Jr., Chief, Labor Section, Office of Chief of Ordnance, War Department, that he had examined the proposed plan of the two-platoon system and approved it, saying: 'The operation of this plan appears to be unobjectionable under the Fair Labor Standards Act, and you may so advise the contractor-operator.' It should be noted, parenthetically, that Lt.-Col. Brennan is an official of the War Department in the Office of the Chief of Ordnance, and that defendant's contract (defendant's Ex. 20, in Article III-T-Definitions) refers to the Chief of Ordnance as one of the representatives of the War Department who, throughout the contract, is charged with the principal duties relating to the administration of the contract on the part of the War Department.

In another recent case, *Swettman v. Remington-Rand, Inc.*, 6 W-H Cases 336 (U.S.D.C., S.D. 111.), decided October 10, 1946, police matrons in an ordnance plant operated by the defendant employer under a cost-plus-a-fixed-fee contract with the United States Government were held to come within the provisions of the Fair Labor Standards Act. The ordnance plant was the Sangamon Ordnance Plant, and the contract was for the assembling and loading of ammunition for the United States Army. The plaintiffs were employed for varying periods of time between December 17, 1942, and August 25, 1945, during which time they worked a varying number of hours and were not paid overtime for their hours in the workweek in excess of 40 hours. The Court concluded that the plaintiffs came within the provisions of the Fair Labor Standards Act and were entitled to the benefits provided thereby. There are numerous other cases of a similar nature applying the Act to varying classes of employees of cost-plus-a-fixed-fee contractors. For example, see *Dolan v. Day & Zimmerman, Inc.*, 6 W-H Cases 9 (U.S.C.D. Mass.), decided April 18, 1946; *Hoff v. North American Aviation Co.*, 6 W-H Cases 216 (U.S.D.C., N.D. Tex.); *Ferguson v. Fred B. Prophet Co.*, 6 W-H Cases 284 (U.S.D.C., S.D. Ind.), see Finding No. 10.

Thus, the conclusion that the Fair Labor Standards Act does not apply to cost-plus-a-fixed-fee Government contractors for the reason that such employees were covered by the provisions of the Walsh-Healey Act, is clearly at variance with the decided cases and unsupported by the actual

wage payments and wage practices which were effective during the life of this contract and recognized by the defendant as well as the contracting governmental agency."

[fol. 1056] STATE OF MISSOURI,

City of St. Louis, ss:

R. H. McRoberts, being duly sworn, on his oath states that the above and foregoing Exhibits A, B and C are true and correct copies, respectively, of excerpts from:

(a) the Brief on Behalf of Defendant The United States Cartridge Company filed on September 24, 1946, and Appendix "A" thereto,

(b) the Reply Brief for Plaintiffs filed on October 12, 1946, and

(c) the Memorandum on Oral Argument and Reply for the Administrator of the Wage and Hour Division, United States Department of Labor, as Amicus Curiae, filed on October 31, 1946, in the District Court of the United States for the Eastern District of Missouri, in the case of R. M. Powell, et al., Plaintiffs, vs. The United States Cartridge Company, a corporation, Defendant, being No. 3597, Civil Action of the said Court.

R. H. McRoberts.

Subscribed and sworn to before me this 27th day of April, 1949. My commission expires July 4, 1949.  
Ruth F. Weakly, Notary Public. (Seal.)

[fol. 1057] I hereby certify that service of the foregoing Appellant's Motion to Modify Opinion was made upon Appellees by mailing a copy thereof to their attorney, Thomas Bond, 408 Olive Street, St. Louis 2, Missouri, on April 27, 1949; and I further certify that service of said Motion was made upon L. Metcalfe Walling, Amicus Curiae, by mailing a copy thereof to his attorney, Reid Williams, Regional Attorney, Department of Labor, at his last known address, 3000 Fidelity Building, Kansas City 6, Missouri, on April 27, 1949.

Marion S. Francis, Attorney for Appellant.

[Endorsed:] Filed in U. S. Court of Appeals, Apr. 27, 1949.

## [fol. 1058] UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT

I, E. E. Koch, Clerk of the United States Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing fifteen typewritten pages contain full, true and complete copies of the Praecipè and Designation of Appellant of Additional Parts of the Record for consideration of the Supreme Court of the United States upon petition for writ of certiorari filed by appellees and of the Motion to Modify Opinion, in the case of The United States Cartridge Company, a Corporation, Appellant, vs. R. M. Powell, et al., Appellees; No. 13663, as full, true and complete as the originals thereof remains on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 10th day of June, A. D. 1949.

E. E. Koch, Clerk of the United States Court of Appeals for the Eighth Circuit. (Seal.)

(2926)

In the Supreme Court of the United States,

October Term, 1949.

R. M. Powell, et al.,

Petitioners,

v.

The United States Cartridge  
Company, a corporation,

Respondent.

No. 96.

Stipulation.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that certain photostats of exhibits appearing in the record on file herein are not essential to a consideration of the questions presented by the petition for the writ, and that same may be omitted from the thirty additional copies of the record required to be filed herein upon certiorari being granted, under the provisions of Rule 38, Paragraph 7 of this Court, and that said additional copies of said record with said photostats deleted may be accepted as in all respects in compliance with the Rules of this Court.

A list of the photostats of exhibits thus to be deleted, and omitted in the preparation of the aforesaid additional copies of the record is attached as Exhibit A hereto.

Dated this 13th day of October, 1949.

THOMAS BOND,

Attorney for Petitioners.

R. H. McROBERTS,

WILLIAM L. MARBURY,

Attorneys for Respondent.

Exhibit A.

List of Non-essential Exhibits to be Deleted and Omitted  
in the Preparation of Additional Sets of the Record in  
Powell, et al., v. The United States Cartridge  
Company, Docket No. 96, October Term, 1949.

Record p. 43, organizational chart.

" " 81, accident report.

" " 95, fire extinguisher chart.

" " 121 to 147, inclusive, Plaintiffs' Exhibits A-1,  
A-2, A-3, A-29, and A-47, being summaries  
of information taken from the payroll records.

" " 149 to 181, inclusive, Plaintiffs' Exhibits B-1,  
B-2, B-3, B-29, and B-47, being computation  
of the overtime claims of certain plaintiffs.

" " 325 and 327, Defendant's Exhibits 7 and 8,  
being notices of employment.

" " 429, Plaintiffs' Exhibit O-1, paid invoice for  
inbound material.

" " 431, Plaintiffs' Exhibit O-2, same.

" " 453, Defendant's Exhibit 9, sample time card.

" " 459, Defendant's Exhibit 10, duplicate organization  
chart.

" " 589, 591; Defendant's Exhibit 12, job description.

" " 597 to 607, inclusive, Defendant's Exhibit 13,  
job description.

" " 609, Defendant's Exhibit 14, job description.

" " 611, Defendant's Exhibit 14, exemption ruling  
by occupational analyst.

" " 623, Defendant's Exhibit 15, sample time card.

" " 625, Defendant's Exhibit 16, sample time card.

" " 371, Plaintiffs' Exhibit J, being bill of lading  
on munitions shipment.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted; The case is assigned for argument immediately preceding the hearing of Nos. 58 and 79 which cases are transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(5200)